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OFFICE OF THE MAYOR



REASURE ISLAND PROJECT 410 AVENUE OF THE PALMS BUILDING 1, 2ND FLOOR TREASURE ISLAND SAN FRANCISCO, CA 94130 (415) 274-0660 FAX (415) 274-0299

NOTICE

The regularly scheduled meeting of the Treasure Island Development Authority of January 9, 2002 has been cancelled.

The next regularly scheduled meeting will be on February 13, 2002 at 1:00 PM.

DOCUMENTS DEPT.

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Lobbyist Ordinance

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance [Chapter 67 of the San Francisco Administrative Code] or to report a violation of the ordinance, contact Donna Hall by mail at Sunshine Ordinance Task Force at City Hall, Room 244, 1 Carlton B. Goodlett Place, San Francisco, CA 94102-4683. The Task Force's telephone and fax numbers are (415) 554-7724 and (415) 554-7854 (fax) or by email at donna_hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library and on the City's website at www.ci.sf.ca.us.

Treasure Island Development Authority 410 Palm Avenue, Building 1, 2nd Floor Treasure Island San Francisco, CA 94130



Ms. Susan From Government Info Center Main Library 100 Larkin St. San Francisco CA 94102

The regular meetings of the Treasure Island Development Authority are held the 2nd Wednesday of each mor at 1 p.m. in Hearing Room 400 in City Hall, 1 Dr. Carlton B. Goodlett Place. The next regular meeting is Wednesday, February 13, 2002.

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A binder of supporting material is available for public viewing at the Mayor's Treasure Island Project office, 410 Palm Avenue, on Treasure Island and at the Government Information Center reference desk, Main Library, Civic Center.

REASURE ISLAND PROJECT 410 AVENUE OF THE PALMS BUILDING 1, 2ND FLOOR TREASURE ISLAND SAN FRANCISCO, CA 94130 (415) 274-0660 FAX (415) 274-0299

TREASURE ISLAND DEVELOPMENT AUTHORITY MEETING AGENDA

Wednesday, February 13, 2002 1 P.M.

Room 400, City Hall 1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

DIRECTORS

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Claudine Cheng, Chair William Fazande, Vice-Chair John Elberling Marcia Rosen

Gerald Green Susan Po-Rufino Doug Wong

Annemarie Conrov, Executive Director London Breed, Commission Secretary

ORDER OF BUSINESS

- 1. Call to Order and Roll Call
- 2. Approval of Minutes (Action Item)
- 3 Communications (Discussion Item)
 - Report of the Treasure Island Project by Executive Director Annemarie Conroy (Discussion Item)
 - Report on access to Treasure Island including public use last month
 - Status of environmental clean up
 - Report on short-term leases
 - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
 - Report on Treasure Island community issues
 - Report on Citizens Advisory Board
 - Report on TIHDI

 - Financial Report
 - Legislation/hearings affecting Treasure Island
 - Request for Proposal Report
 - General Public Comment (Discussion Item)
- Ongoing Business by Directors and Introduction of New Business by members (Discussion Item)
- Resolution authorizing the Authority to extend a month-to-month sublease with the Department of Aging and Adult Services for Room 21 located in Building One for an additional twelve months (Action Item)
- 8. Resolution authorizing the Authority to extend a month-to-month sublease with the District Attorney's Office for Room 307 located in Building One for an additional twelve months (Action Item)

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- Resolution authorizing the Authority to extend a month-to-month sublease with W Wong Construction for Building 62 for an additional twelve months (Action Item)
- Resolution authorizing the Authority to extend a month-to-month sublease with Island Creative Management for Building 99 for an additional twelve months (Action Item)
- 11. Presentation of Focused Request for Proposal for Primary Developer to be Issued to Treasure Island Community Development (Discussion Item)
- 12. Adjourn

Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.

MEETING AGENDAS NOW AVAILBLE ON E-MAIL

Disability Access

The Treasure Island Development Authority will meet at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

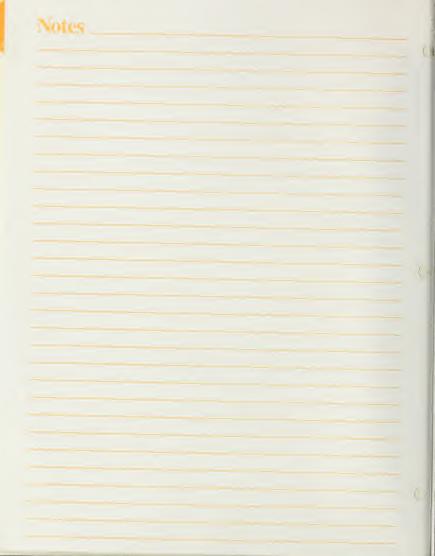
In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

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TREASURE ISLAND WEBSITE

Check out the Treasure Island website at www.ci.sf.ca.us/treasureisland to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.









Minutes of Meeting Treasure Island Development Authority December 12, 2001

1. Call to order 1:06 PM

Roll Call Present: John Elberling

William Fazande Marcia Rosen Claudine Cheng Gerald Green

Excused: Doug Wong Susan Po-Rufino

- The minutes of November 14, 2001 were approved with one abstention. John Elberling abstained from Voting because he was absent from the November 14, 2001 meeting.
- 3. No communications.
- 4. Executive Director's Report given by Annemarie Conroy:

Public Access: Oracle World held a major event on TI last week for between 5,000 & 7,000 people in Building 3. There are sixty weddings and thirty private parties scheduled for next year. We continue to facilitate senior bus tours of the Island.

Environmental Cleanup: The Navy is working on the south waterfront removing old fuel lines. There are air sampling at Bigelow Court to prepare units for TIHDI. The Navy is redrafting the EECA (Engineering Evaluation and Cost Analysis).

Short-term leases: The Authority will enter into a no-cost lease with the San Francisco Fire Fighters' toy program for storage.

Bay Bridge: Staff continues to work with Caltrans on the MOA with regards to the mitigation package and

Community Issues: Ms. Conroy comments on a newspaper article regarding the Job Corps opening a store on Treasure Island which neglected to mention that the Authority and Job Corps have been in a partnership on the store for at least a year. The Authority has provided Job Corps with the names of people interested or who were solicited to run a grocery store and many of them were at the Job Corps' pre-bid conference. Bus service is working fairly regularly. We hope to take plans for a dog park to the Community meeting next week.

Citizens' Advisory Board: There was no meeting in November, the next meeting will be on January 17, 2002.

TIHDI: Nothing new to report

Financial Report: No financial report.

Legislation & hearings affecting Treasure Island: Half of the salaries of all special assistants were placed on reserve. Treasure Island was separately placed on reserve for half of the salaries. The end of the year marks the sixth month. The Finance Committee meets next Wednesday to discuss the salary issue. We had a grant allocation for \$800,000 as a request for the temporary construction of a landing at Pier 1, which Congresswoman Nancy Pelosi helped to secure at the Federal level.

tephen Proud, Development Director, states that staff continues to work on the distribution of a draft of the RFP by the end of December 2001 to the various agencies and the Authority, the CAB and any interested departments. By the week of February 18, 2002, all comments on the Draft RFP should be received by staff for revisions. Staff plans to present it to the Authority in its final form at the TIDA meeting in March.

5. General Public Comment:

Carrie Wonzer, TIHDI, is pleased to announce that TIHDI received an award in excellence for young non-profits, sponsored by the Management Center and Wells Fargo Banks. She states that the Sailing Center has been a huge asset to the residents in TIHDI supported housing. TIHDI supports the extension of their sublease.

- 6. Ongoing Business by Directors and Introduction of New Business by members: none
- 7. Resolution authorizing the Executive Director to amend the sublease with the Treasure Island Sailing Center for an additional two-year term.

Stephen Proud states that the Sailing Center started out on a month to month use permit basis. In November of 1999 we decided to get into a more formal arrangement and we brought, for your approval, a sublease that granted them some area around Pier 12. The initial focus of the Center was geared toward the training activities that were related to the Sidney Olympics. The focus has changed over time. The focus now is sailing instruction and youth sailing activities. There were over 250 kids participating in the sailing program last summer. The Sailing Center has been a host site for many national events including the NCAA sail center for the Cal Berkeley sailing team and many of the Pacific coast regattas. The sublease has been revised to reflect the new focus of the Center. We feel it is appropriate to consider another two-year term of the sublease. The term sheet for the Marina that we brought to you last month had a provision that required Treasure Island Enterprises to use best faith efforts to work out an arrangement with the Sailing Center so it could have a life once the new Marina is created. The most significant change in the sublease is that we are proposing that the premises be made available to the Sailing Center on a no-cost basis. They would continue to be obligated to pay all the normal charges, i.e., CAM charges, maintenance, taxes, etc. We retain a \$5,000 security deposit that will roll over to the new sublease. There is still a balance of improvements that need to be done, some of which are "big ticket" items. They would be responsible for utilities.

Mr. Green asks for specifics on the "big ticket" items that need to be improved. Mr. Proud states that the costs of the ADA improvements are significantly more than previously thought. The alternative is that the Sailing Center will use the part of the Marina for its disabled students once the Marina is ADA accessible. We didn't think it was wise to spend a large amount of money on a facility that might ultimately be demolished or deconstructed.

Ms. Rosen appreciates the alternative solution. She assumes that should any disabled person want to take advantage of the program, the boat would be at an accessible slip.

Carissa Harris Adamson. President of the Sailing Center, states that their mission is to enhance the sport of sailing by providing instruction and accommodation for people of various skill levels and abilities. It is a training ground for novice and Olympic class sailors and provides a venue to host regional and international regattas. The collegiate sailors teach the novice sailors not only to sail but teach teamwork, leadership and other skills. Our adaptive sailing program really helps to give a sense of independence and self-confidence to disabled people. A description of the various programs follows.

Mr. Fazande asked about outreach to the youth of the community. Ms. Adamson replied that they contact organized youth programs, websites, recreation centers, etc.

Ms. Rosen asks is there some form of certification needed. Ms. Adamson replied not at this time. We hope to offer that in the future. We have an assortment of boats, as well as a sonar boat, which is adapted for people with disabilities. Our numbers grow as we get more boats donated.

Ms. Cheng asks about the cost of the program. Ms. Adamson replied the suggested donation to use the Center is \$5 per hour but is not required.

Mr. Elberling asked about the programs budget and donors for the program. Ms. Adamson replied that the youth program budget was \$24,000 last year just for the summer program. The entire budget is about \$45,000/year. Our revenue sources are principally private donors. The staff is all volunteer.

Herb Meyer, Sailing Centerboard of directors, became a quadriplegic sailing on the bay eight years ago. He currently sails in the sonar 23. We are putting together a group to participate in the 2004 para-olympics in Athens.

Mr. Green asked if Mr. Meyer is okay with the temporary solution to accommodate access needs. Mr. Meyer replied that boats are launched at Piers 11 & 12 and brought over to the yacht harbor to board. That would work on a temporary basis. Discussion of ADA ramps follows.

Ida Brown, parent of TI veteran sailor, came into contact with the program through the Colombia Parks Boys and Girls Club. She is pleased that her daughter could be exposed to sailing. Her daughter speaks of her experiences.

Mr. Fazande moved approve. Ms. Rosen seconded. Approved 5-0

8. Election of Officers for the Treasure Island Development Authority Board.

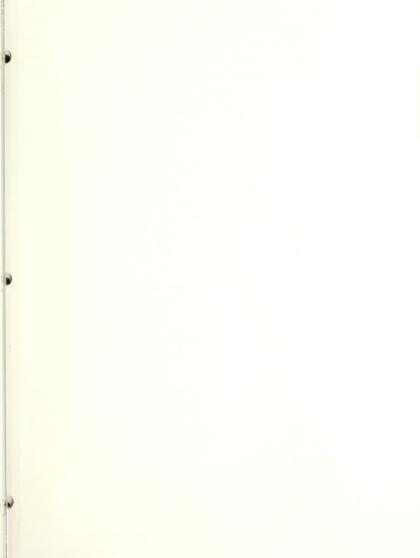
Ms. Conroy states that Ms. Cheng was nominated for chair and Mr. Fazande was nominated for vice-chair. She thanks John Elberling for his years of service to Treasure Island and TIHDI.

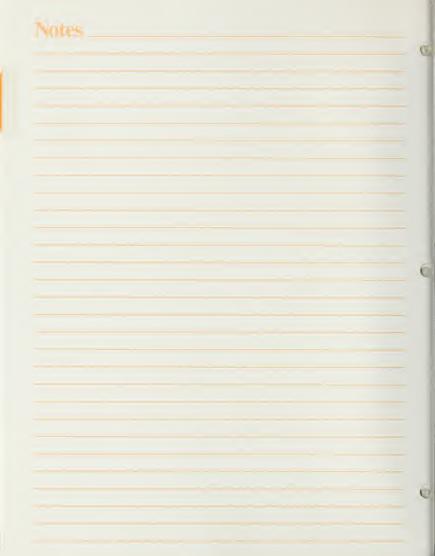
Motion to elect Claudine Cheng as chair and Bill Fazande as vice-chair, seconded, carries unanimously.

Mr. Green moved approval. Ms. Rosen seconded. Approved 5-0

9. Adjourn 2:00PM





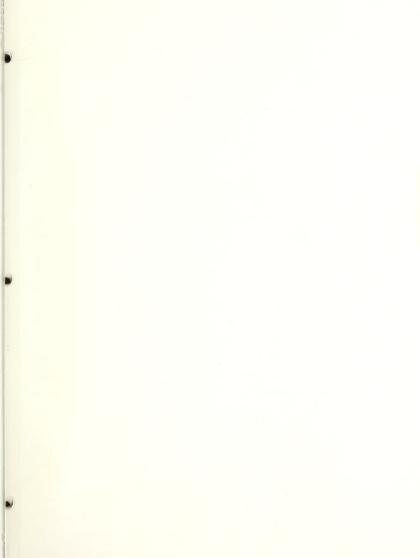






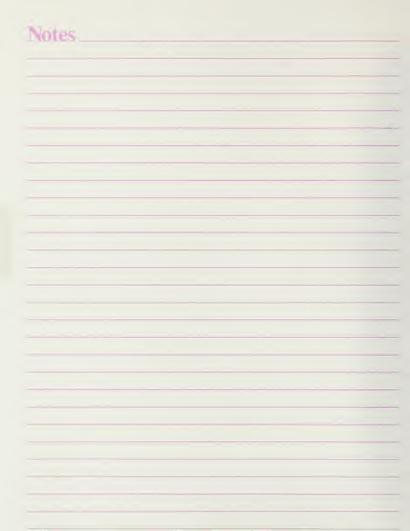






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TREASURE ISLAND DEVELOPMENT AUTHORITY City and County of San Francisco

Agenda Item No. 7

February 13, 2002

Subject: Resolution authorizing the Authority to extend a month-to-month

Sublease with the City and County of San Francisco, acting by and through its Department of Real Estate on behalf of the Department of Aging and Adult Services for the use of Room 21in Building 1.

Staff Contact: London Breed, Development Specialist 274-0665

SUMMARY OF PROPOSED ACTION

The staff is requesting the Authority to adopt a resolution to continue a month-to-month sublease with the Department of Aging and Adult Services ("DAAS") for use of Room 21 in Building 1 as storage space on the same terms as the original sublease dated August 9, 2001.

DISCUSSION

The sublease provides for use of Room 21 in Building 1 by the Department of Aging and Adult Services for storage space and for no other purpose. On August 9, 2001, the Executive Director entered into the sublease to allow the DAAS use of Room 21 to store personal property of conservatees and estates, generally consisting of files and paper goods, books, and personal mementos.

Since the term has expired on January 31, 2002, approval of the resolution will extend the term of the Sublease for an additional twelve months through January 31, 2003. Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of the sublease on a month-to-month basis for up to one twelve months requires Authority approval.

RECOMMENDATION

Staff recommends approval for the Authority to continue a month-to-month sublease with the DAAS for an additional twelve months. Further continuation of the Sublease beyond January 31, 2003 would require additional Authority approval.

EXHIBITS

Original Sublease dated August 9, 2001



[Continuation of Month-to-Month Sublease of Building 1, Room 21]

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND THE SUBLEASE FOR

BUILDING 1, ROOM 21 WITH THE SAN FRANCISCO DEPARTMENT OF AGING AND

ADULT SERVICES ON A MONTH-TO-MONTH BASIS FOR A PERIOD NOT TO EXCEED

TWELVE MONTHS.

WHEREAS, on August 9, 2001, the Authority's Executive Director, acting under Section 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property, adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-month sublease (the "Sublease") attached as Exhibit A, with the City and County of San Francisco acting by and through its Department of Real Estate on behalf of the San Francisco Department of Aging and Adult Services ("Subtenant") for the use Room 21 located in Building 1 (the "Initial Premises") for storage space at a rental rate of Five Hundred Dollars (\$500.00) per month; and

WHEREAS, under Section 10 of the Transfer Rules, even a month-to-month sublease has to be separately approved by the Authority if the cumulative term of such sublease exceeds six months and the six month term has expired; and

WHEREAS, Subtenant wishes to continue to occupy the Premises under the Sublease on a month-to-month basis for an additional twelve months; now therefore be it

RESOLVED: That the Board of Directors hereby approves and authorizes the continuation of the Sublease on a month-to-month basis for up to twelve months as set forth in the Amendment to the Sublease attached as Exhibit B; provided that nothing herein shall limit the Authority's ability to terminate the Sublease on thirty days notice as provided in the



Sublease and provided further that any continued occupancy of the Premises under the Sublease past January 31, 2003 shall require the separate approval of the Authority.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on February 13, 2002.

William Fazande









INTERIM SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

CITY AND COUNTY OF SAN FRANCISCO

as Subtenant

For the Sublease of

Building 1, Room 21 at Naval Station Treasure Island San Francisco, California

August 1, 2001

TREASURE ISLAND SUBLEASE

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LIST OF EXHIBITS:

EXHIBIT A - Master Lease

EXHIBIT B - Premises

EXHIBIT C - Seismic Report
EXHIBIT D - Rules and Regulations
EXHIBIT E - Utilities

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this 1st day of August 2001, is by and between the Treasure Island Development Authority ("Sublandlord") and City and County of San Francisco acting by and through its Director of Property on behalf of the Department of Aging and Adult Services ("Subleanat"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

- A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease (the "Master Lease") dated September 5, 1998, a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord all of Building 1 located on Treasure Island Naval Station (the "Property"), together with a non-exclusive right to use certain related parking, all as more particularly shown on Exhibit A to the Master Lease.
- B. Subtenant desires to sublet Room 21 in Building 1 of the Property, as depicted on <u>Exhibit B</u> attached and hereafter referred to as the "Premises" from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. PREMISES

1.1. <u>Subleased Premises</u>. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises including the improvements thereon, together with the right to use the common areas in Building 1 for ingress to and egress from the Premises.

1.2. As Is Condition of Premises.

(a) Inspection of Premises. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Property and the Premises and the suitability of the Property and the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Property and the

Premises are suitable for its operations and intended uses.

As Is; Disclaimer of Representations. Subtenant acknowledges and (b) agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws. statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose or compliance with disability access laws.

2. COMPLIANCE WITH MASTER LEASE

- 2.1. <u>Incorporation by Reference</u>. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein
- 2.2. <u>Conflict</u>. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.
- 2.3. <u>Compliance with Master Lease</u>. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.4. Automatic Termination. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

3. TERM

3.1. <u>Term of Sublease</u>. The term of this Sublease shall commence on August 9, 2001 (the "Commencement Date") and continue on a month-to-month basis expiring on January 31, 2002 (the "Expiration Date"), unless sooner terminated or extended pursuant to the terms of the Sublease.

4. RENT

- 4.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Five Hundred Dollars (\$500.00) (the "Base Rent") per month. Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Rent for such fractional month shall be prorated based on a thirty (30) day month.
- 4.2. Additional Charges. In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to the Premises as provided in Section 4 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

5. TAXES, ASSESSMENTS AND OTHER EXPENSES

5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

- (a) Payment Responsibility. Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.
- (b) <u>Taxability of Possessory Interest</u>. Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.
- (c) No Liens. Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.
- (d) <u>Reporting Information</u>. Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.
- 5.2. Other Expenses. This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation maintenance or services necessary for Subtenant's use.
- 5.3. <u>Evidence of Payment</u>. Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

6. USE: COVENANTS TO PROTECT PREMISES

- 6.1. <u>Subtenant's Permitted Use</u>. Subtenant may use the Premises as storage space for the Department of Aging and Adult Services and for no other purpose.
- 6.2. <u>Subtenant's Access to the Premises</u>. As provided in Section 30 of the Master Lease, Subtenant will have access to the Premises on normal business hours, Monday through Friday from 8:30 AM to 5:30 PM, provided however, Subtenant shall coordinate such access with the local representative of Master Landlord.
- 6.3. <u>Rules and Regulations</u>. Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as <u>Exhibit D</u>, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.
- 6.4. Easements. This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction. installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.
- 6.5. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

6.6. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property or make or allow any of Subtenant's family, domestic partners or guests to make any loud or boisterous noise, or engage in any other objectionable behavior. Subtenant further agrees not to commit, suffer, or permit any waste or nuisance in, on or about the Premises.

7. ALTERATIONS

- 7.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above. any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times. WITHOUT LIMITING THE FOREGOING, SUBTENANT ACKNOWLEDGES AND AGREES THAT AS A RESULT OF ASBESTOS AND LEAD BASED PAINT HAZARDS, PAINTING, SCRAPING OR SANDING OF ANY PORTION OF THE PREMISES IS STRICTLY PROHIBITED.
- 7.2. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 17 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this

Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.

- 7.3. <u>Subtenant's Personal Property</u>. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.
- 7.4. <u>Sublandlord's Alterations of the Building and Building Systems</u>. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

8. REPAIRS AND MAINTENANCE

- 8.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.
- 8.2. <u>Trash</u>. Tenant shall deposit all trash into designated containers in the Building in compliance with the Rules and Regulations attached hereto as <u>Exhibit D</u>. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.
- 8.3. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this

Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises

10. COMPLIANCE WITH LAWS

10.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations or use of the Premises made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10.2. Regulatory Approvals.

- Responsible Party. Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ('Indemnify") the Sublandlord and City, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.
- 10.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

11. ENCUMBRANCES

11.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

12. DAMAGE OR DESTRUCTION

- 12.1. <u>Damage or Destruction to the Premises</u>. In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.
- 12.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.
- 12.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. ASSIGNMENT AND SUBLETTING

13.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

14. DEFAULT; REMEDIES

- 14.1. <u>Events of Default</u>. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:
- (a) Rent. Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;
- (b) <u>Covenants, Conditions and Representations</u>. Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.
- (c) <u>Vacation or Abandonment</u>. Any abandonment of the Premises for more than fourteen (14) consecutive days; and
- (d) <u>Bankruptev</u>. The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.
- 14.2. <u>Remedies</u>. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:
- (a) Terminate Sublease and Recover Damages. The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.
- (b) <u>Appointment of Receiver</u>. The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

14.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

- 15.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Building due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:
- (a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

- (b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.
- (c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.
- (d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance form the Indemnified Parties under federal and state relocation assistance laws.
- (c) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.
- (f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.
- (g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

- (h) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.
- (i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

15.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents. shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Building due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease

the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

16. INSURANCE

16.1 Subtenant's Insurance. Sublandlord acknowledges that Subtenant maintains a program of self-insurance and agrees that Sublandlord shall not be required to carry any third-party comprehensive general liability insurance or other insurance with respect to this Sublease. Subtenant assumes the risk of damage to any of its personal property, except to the extent caused by the negligence or willful misconduct of Sublandlord.

17. ACCESS BY SUBLANDLORD

17. 1 Access to Premises by Sublandlord:

- (a) <u>General Access</u>. Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.
- (b) Emergency Access. In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

- (c) No Liability. Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant's Agents or Subtenant's Invitees.
- 17.2 Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Landlord.

18. SURRENDER

18.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

19. HAZARDOUS MATERIALS

19.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any

federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA". also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises . Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

19.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invites results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and

remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property. Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

19.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

20. GENERAL PROVISIONS

20.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord

Treasure Island Development Authority 401 Palm Avenue Building 1, Room 237 Treasure Island San Francisco, CA 94130 Attn: London Breed Phone No.: (415) 274-0665

Fax No.: (415) 274-0299

with a copy to:

Office of the City Attorney

City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94103 Attn: Donnell Chov Phone No.: (415) 554-4736 Fax No.: (415) 554-4755

Notice Address of Subtenant:

San Francisco Department of Aging and Adult Services 25 Van Ness Avenue, Suite 650 San Francisco, CA 94102 Attn: John Clark Phone No. (415) 864-6051 Fax No. (415) 864-3991

Department of Real Estate 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Attn: Julian Sutherland Phone No. (415) 554-9866 Fax No. (415) 554-9216

Notice Address of Master Landlord: Commanding Officer (Code 24) Engineering Field Activity West Naval Facilities Engineering Command 900 Commodore Drive San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice...

- 20.2. Security Deposit. Sublandlord hereby waives any requirement for a security deposit for Subtenant's right to use the Premises in accordance with the terms and conditions of the Sublease.
 - 20.3. No Implied Waiver. No failure by Sublandlord to insist upon the strict

performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

- **20.4.** <u>Amendments.</u> Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.
- 20.5. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.
- **20.6.** <u>Joint and Several Obligations</u>. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.
- 20.7. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to

a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

- 20.8. Successors and Assigns. Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.
- 20.9. <u>Brokers.</u> Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.
- 20.10. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.
- 20.11. <u>Governing Law</u>. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.
- 20.12. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes al prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms

and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

- 20.13. Attornevs' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.
- **20.14.** <u>Time of Essence</u>. Time is of the essence with respect to all provisions of this <u>Sublease</u> in which a definite time for performance is specified.
- **20.15.** <u>Cumulative Remedies</u>. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.
- 20.16. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.
- 20.17. Relationship of Parties. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.
 - 20.18. Recording. Subtenant agrees that it shall not record this Sublease nor any

memorandum or short form hereof in the official records of any county.

- 20.19. Non-Liability of Indemnified Parties' officials, employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.
- **20.20.** <u>No Discrimination</u>. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.
- 20.21. <u>Counterparts</u>. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 20.22. <u>Master Landlord's Consent</u>. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

21. SPECIAL PROVISIONS

21.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

21.2. Non-Discrimination.

- (a) <u>Covenant Not to Discriminate</u>. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.
- (b) <u>Subleases and Other Subcontracts</u>. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of <u>subsection</u> (a) above. In addition,

Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

- (c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- (d) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.
- 21.3. No Relocation Assistance; Waiver of Claims. Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.
- 21.4. Rent Control Laws Inapplicable. Subtenant acknowledges and agrees that the rent for the Premises is controlled by a governmental agency and, therefore, neither the Premises nor this Sublease are subject to the provisions of any rent control or other similar ordinances,

including, without limitation, the provisions of Chapter 37 of the San Francisco Administrative Code.

- 21.5. <u>MacBride Principles Northern Ireland</u>. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages then to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, <u>et seq</u>. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.
- 21.6. <u>Tropical Hardwood Ban</u>. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.
- 21.7. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.
- 21.8. Prevailing Wages for Construction Work. Subtenant agrees that any person performing labor in the construction of the alterations required under Section 7.1 [Alterations] shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.
- 21.9. <u>Prohibition of Tobacco Advertising.</u> Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing

cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communication the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

CITY AND COUNTY OF SAN FRANCISCO,

A municipal corporation

Its: Director of Property

SUBLANDLORI

TREASURE ISLAND DEVELOPMENT

AUTHORITY

Amemarie/Conroy

Its: Executive Director

Approved as to Form:

Deputy City Attorney



Notes
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TREASURE ISLAND DEVELOPMENT AUTHORITY City and County of San Francisco

Agenda Item No. 8

February 13, 2002

Subject:

Resolution authorizing the Authority to extend a month-to-month Sublease with the San Francisco District Attorney's Office for the

use of Room 307, Building 1.

Staff Contact:

London Breed, Development Specialist 274-0665

SUMMARY OF PROPOSED ACTION

The staff is requesting the Authority to adopt a resolution to continue a month-to-month sublease with the San Francisco District Attorney's Office for use of Room 307 in Building 1 as office space on the same terms as the original sublease dated July 17, 2000.

DISCUSSION

The sublease provides for use of Room 307 in Building 1 by the District Attorney's Office for office space and for no other purpose. Since July 17, 2000 the Bad Check Unit of the District Attorney's Office occupied Room 307 in Building 1. The Bad Check Unit moved out of Building 1 on December 22, 2000 and on February 12, 2001, the DA's office moved the Asset Forfeiture Unit to Room 307 in Building 1. On February 14, 2001, the Authority approved an amendment to increase the monthly rental rate from Two Thousand Seven Hundred Dollars (\$2,700) to Three Thousand Dollars (\$3,000) effective February 1, 2001 to cover the increased administrative and utilities cost for the project office. The amendment also extended the term of the Sublease for an additional twelve months and the term expired on January 31, 2002. Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of the sublease on a month-to-month basis for up to one twelve months requires Authority approval.

RECOMMENDATION

Staff recommends approval for the Authority to continue a month-to-month sublease with the District Attorney's Office for an additional twelve months. Further continuation of the Sublease beyond January 31, 2003 would require additional Authority approval.

EXHIBITS

Amendment to the Sublease dated February 1, 2001 Original Sublease dated July 17, 2000



FILE NO.	

RESOLUTION NO.	70000
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[Continuation of Month-to-Month Sublease of Building 1, Room 307]

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND THE SUBLEASE FOR

BUILDING 1, ROOM 307 WITH THE SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE

ON A MONTH-TO-MONTH BASIS FOR A PERIOD NOT TO EXCEED TWELVE MONTHS.

WHEREAS, on July 17, 2000, the Authority's Executive Director, acting under Section 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property, adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-month sublease (the "Sublease") attached as Exhibit A, with the San Francisco District Attorney's Office ("Subtenant") for the use of Room 307 located in Building 1 (the "Initial Premises") for office space at a rental rate of Two Thousand Seven Hundred Dollars (\$2,700) per month; and

WHEREAS, under Section 10 of the Transfer Rules, even a month-to-month sublease has to be separately approved by the Authority if the cumulative term of such sublease exceeds six months; and

WHEREAS, On February 14, 2001, the Board of Directors of the Authority approved an Amendment, Attached as Exhibit B, to the sublease to increase the monthly rental rate to Three Thousand Dollars (\$3,000), and extend the term for an additional twelve months and the approved twelve month extension has expired; and

WHEREAS, Subtenant wishes to continue to occupy the Premises under the Sublease on a month-to-month basis for an additional twelve months; now therefore be it

RESOLVED: That the Board of Directors hereby approves and authorizes the continuation of the Sublease on a month-to-month basis for up to twelve months as set forth

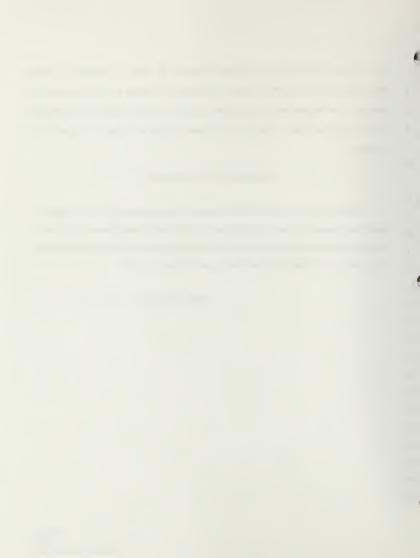


in the Second Amendment to the Sublease attached as Exhibit C; provided that nothing herein shall limit the Authority's ability to terminate the Sublease on thirty days notice as provided in the Sublease and provided further that any continued occupancy of the Premises under the Sublease past January 31, 2003 shall require the separate approval of the Authority.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on February 13, 2002.

Willaim Fazande





SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

San Francisco District Attorney's Office

as Subtenant

For the Sublease of

Building 1, Room 307 at Naval Station Treasure Island San Francisco, California

July 17, 2000

TREASURE ISLAND SUBLEASE

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LIST OF EXHIBITS:

EXHIBIT A -- Master Lease

EXHIBIT A -- Industri Lease
EXHIBIT B -- Drawing of the Property
EXHIBIT C -- Drawing of the Premises
EXHIBIT D -- Rules and Regulations
EXHIBIT E -- Utilities

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this 17th day of July 2000, is by and between the Treasure Island Development Authority ("Sublandlord") and City and County of San Francisco acting by and through its District Attorney's Office ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

- A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease (the "Master Lease") dated September 5, 1998, a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord all of Building 1 located on Treasure Island Naval Station (the "Property"), together with a non-exclusive right to use certain related parking, all as more particularly shown on the map attached hereto as Exhibit B (the "Premises").
- Exhibit C, attached and hereafter referred to as the "Premises") from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. PREMISES

1.1. <u>Subleased Premises</u>. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises of Room 307 in Building 1, including the improvements thereon and the non-exclusive right to use 6 parking spaces shown on <u>Exhibit</u> C.

1.2. As Is Condition of Premises.

(a) Inspection of Premises. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

As Is; Disclaimer of Representations. Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose or compliance with disability access laws.

2. COMPLIANCE WITH MASTER LEASE

- 2.1. <u>Incorporation by Reference</u>. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein
- 2.2. <u>Conflict</u>. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.
- 2.3. <u>Compliance with Master Lease</u>. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.4. <u>Automatic Termination</u>. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

3. TERM

3.1. <u>Term of Sublease</u>. The term of this Sublease shall commence on July 18, 2000 (the "Commencement Date") and continue on a month to month basis expiring on December 18, 2000 (the "Expiration Date"), subject to Section 3.2 below or unless sooner terminated or extended pursuant to the terms of the Sublease.

4. RENT

- 4.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Two Thousand Seven Hundred Dollars (\$2,700.00) (the "Base Rent") per month. Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Rent for such fractional month shall be prorated based on a thirty (30) day month.
- 4.2. Additional Charges. In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to the Premises as provided in Section 4 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

- 4.3. Late Charge. If Subtenant fails to pay any Rent within ten(10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.
- 4.4. <u>Default Interest</u>. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the interest rate in effect which has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 33 of the Master Lease. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

5. TAXES, ASSESSMENTS AND OTHER EXPENSES

5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

- (a) Payment Responsibility. Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.
- (b) <u>Taxability of Possessory Interest</u>. Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.
- (c) <u>No Liens</u>. Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other

property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

- (d) <u>Reporting Information</u>. Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.
- 5.2. Other Expenses. This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.
- 5.3. Evidence of Payment. Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

6. USE; COVENANTS TO PROTECT PREMISES

- 6.1. <u>Subtenant's Permitted Use</u>. Subtenant may use the Premises as office spaces for the District Attorney's Office and for no other purpose.
- 6.2. <u>Subtenant's Access to the Premises</u>. As provided in Section 30 of the Master Lease, Subtenant will have access to the Premises on normal business hours, Monday through Friday from 8:00 AM to 7:00 PM, provided however, Subtenant shall coordinate such access with the local representative of Master Landlord.
- 6.3. <u>Rules and Regulations</u>. Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as <u>Exhibit D</u>, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.
- 6.4. Easements. This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed

or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.

- 6.5. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.
- 6.6. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property or make or allow any of Subtenant's family, domestic partners or guests to make any loud or boisterous noise, or engage in any other objectionable behavior. Subtenant further agrees not to commit, suffer, or permit any waste or nuisance in, on or about the Premises.

7. ALTERATIONS

7.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the

making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times. WITHOUT LIMITING THE FOREGOING, SUBTENANT ACKNOWLEDGES AND AGREES THAT AS A RESULT OF ASBESTOS AND LEAD BASED PAINT HAZARDS, PAINTING, SCRAPING OR SANDING OF ANY PORTION OF THE PREMISES IS STRICTLY PROHIBITED.

- 7.2. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.
- 7.3. <u>Subtenant's Personal Property</u>. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.
- 7.4. Sublandlord's Alterations of the Building and Building Systems. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

8. REPAIRS AND MAINTENANCE

8.1. <u>Subtenant Responsible for Maintenance and Repair</u>. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost

thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

- **8.2.** <u>Utilities.</u> Sublandlord shall provide the basic building utilities and services described in the attached <u>Exhibit E.</u> (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises.
- **8.3.** Trash. Tenant shall deposit all trash into designated containers in the Building in compliance with the Rules and Regulations attached hereto as Exhibit D. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.
- 8.4. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond. Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times

to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

10. COMPLIANCE WITH LAWS

10.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations or use of the Premises made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10.2. Regulatory Approvals.

Responsible Party. Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ('Indemnify") the Sublandlord and City, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their

respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

10.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

11. ENCUMBRANCES

11.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

12. DAMAGE OR DESTRUCTION

- 12.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.
 - 12.2. No Abatement in Rent. In the event of any damage or destruction to the

Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

12.3. <u>Waiver</u>. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. ASSIGNMENT AND SUBLETTING

13.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

14. DEFAULT; REMEDIES

- 14.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:
- (a) Rent. Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;
- (b) <u>Covenants, Conditions and Representations.</u> Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.
- (c) <u>Vacation or Abandonment</u>. Any abandonment of the Premises for more than fourteen (14) consecutive days; and
 - (d) <u>Bankruptcy</u>. The appointment of a receiver to take possession of all or

substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

- 14.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:
- (a) Terminate Sublease and Recover Damages. The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.
- (b) <u>Appointment of Receiver</u>. The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.
- 14.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

15.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to

Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Building due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

- (a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.
- (b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.
- (c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.
 - (d) Subtenant acknowledges that it will not be a displaced person at the time

this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance form the Indemnified Parties under federal and state relocation assistance laws.

- (e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.
- (f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.
- (g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.
- (h) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.
- (i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

15.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents. shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Building due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees. howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

INSURANCE

16.1. Subtenant's Insurance. Within five (5) of the Effective Date, Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following

insurance:

- (a) Property Insurance. Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Building and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.
- (b) <u>Public Liability and Other Insurance</u>. Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:
- (i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, liquor liability insurance, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises arising from earthquakes or subsidence, in an amount not less than \$1,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.
- (ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.
- (iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.
- **16.2.** General Requirements. All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.
- (a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.
- (b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit

shall double the occurrence or claims limits specified above.

- (c) All liability insurance policies shall be endorsed to provide the following:
- (i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.
- (ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.
- (iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.
- 16.3. Proof of Insurance. Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.
- 16.4. <u>No Limitation on Indemnities</u>. Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.
- 16.5. <u>Lapse of Insurance</u>. Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.
- 16.6. <u>Subtenant's Personal Property.</u> Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

16.7. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

17. ACCESS BY SUBLANDLORD

17.1. Access to Premises by Sublandlord.

- (a) General Access. Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.
- (b) Emergency Access. In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.
- (c) No Liability. Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.
- 17.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

18. SURRENDER

18.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

19. HAZARDOUS MATERIALS

19.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural

gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

19.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes. without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property,

Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

19.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

20. GENERAL PROVISIONS

20.1. <u>Notices</u>. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord Treasure Island Development Authority

Treasure Island Project Office

401 Palm Avenue Building 1, Room 237 Treasure Island

Attn: Executive Director Fax No.: 415-274-0299

with a copy to: Office of the City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place San Francisco, CA 94103 Attn: Donnell Choy

Fax No.: (415) 554-4736

Notice Address of Subtenant: San Francisco District Attorney's Office

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Hall of Justice 850 Brayant St.

San Francisco, CA 94103

Attn: Reginald Smith Phone No. (415) 553-1268 Fax No.: (415) 575-8815

Notice Address of Master Landlord: Commanding Officer (Code 24)

Commanding Officer (Code 24)
Engineering Field Activity West
Naval Facilities Engineering Command
900 Commodore Drive
San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

- 20.2. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Two Thousand Seven Hundred Dollars (\$2,700) for security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Sublandlord within forty-five (45) days of the termination of this Sublease.
- 20.3. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any

Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

- 20.4. <u>Amendments</u>. Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.
- 20.5. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.
- 20.6. <u>Joint and Several Obligations</u>. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.
- 20.7. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not

language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

- 20.8. Successors and Assigns. Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.
- 20.9. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.
- 20.10. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.
- **20.11.** Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.
- 20.12. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes al prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises

or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

- 20.13. Attornevs' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.
- 20.14. <u>Time of Essence</u>. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.
- 20.15. <u>Cumulative Remedies</u>. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.
- 20.16. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.
- 20.17. Relationship of Parties. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.
- 20.18. <u>Recording</u>. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.
- 20.19. Non-Liability of Indemnified Parties' officials, employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the

Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

- **20.20.** <u>No Discrimination</u>. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.
- **20.21.** Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- **20.22.** <u>Master Landlord's Consent</u>. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

21. SPECIAL PROVISIONS

- 21.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.
- 21.2. <u>Public Transit Information</u>. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

21.3. Non-Discrimination.

(a) <u>Covenant Not to Discriminate</u>. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

- (b) <u>Subleases and Other Subcontracts</u>. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of <u>subsection</u> (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.
- (c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- (d) <u>HRC Form.</u> Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC").
- (e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.
- 21.4. No Relocation Assistance; Waiver of Claims. Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from

Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.

- 21.5. Rent Control Laws Inapplicable. Subtenant acknowledges and agrees that the rent for the Premises is controlled by a governmental agency and, therefore, neither the Premises nor this Sublease are subject to the provisions of any rent control or other similar ordinances, including, without limitation, the provisions of Chapter 37 of the San Francisco Administrative Code.
- 21.6. MacBride Principles Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages then to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.
- 21.7. <u>Tropical Hardwood Ban</u>. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.
- 21.8. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.
- 21.9. Prevailing Wages for Construction Work. Subtenant agrees that any person performing labor in the construction of the alterations required under Section 7.1 [Alterations] shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction

period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.

21.10. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communication the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

City and County of San Francisco acting by and Through its District Attorney's Office

By: Sunce Hay Its:

SUBLANDLORD:

Treasure Island Development Authority

By: Annemarie Conroy

Its: Executive Director

Approved as to Form:

Deputy City Attorney







AMENDMENT TO

SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

THE CITY AND COUNTY OF SAN FRANCISCO

as Subtenant

For the Sublease of

Building 1, Room 307 at Naval Station Treasure Island San Francisco, California

February 1, 2001



AMENDMENT TO TREASURE ISLAND SUBLEASE

THIS AMENDMENT TO SUBLEASE (the "Amendment"), dated as of February 1, 2001, is entered into by and between the Treasure Island Development Authority ("Sublandlord") and the City and County of San Francisco acting by and through its Department of Real Estate on behalf of the District Attorney's Office ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Amendment is made with reference to the following facts and circumstances:

- A. On or about July 17, 2000, Sublandlord and Subtenant entered into that certain sublease agreement (hereafter, the "Sublease") for the sublease of Room 307 at Building One consisting of approximately 1,200 square feet on Naval Station Treasure Island, all as shown on Exhibit B of the Sublease.
- B. The Parties wish to amend the Sublease to continue the sublease on a month-to-month basis for an additional twelve months.
- C. The Sublandlord wishes to increase the monthly rental rate to \$3,000 per Month to cover increased administrative and utilities cost.

NOW THEREFORE, Sublandlord and Subtenant agree to amend the Sublease as follows:

- 1. The first sentence to paragraph 3.1 of the Sublease is hereby amended to read as follows:
 - "3.1 Term of Sublease. The term of this Sublease (the "Term") shall be on a month-tomonth basis, and shall commence on July 18, 2000 (the "Commencement Date") and, may be terminated by either party, for any reason and without liability for such termination, upon thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, this Sublease shall automatically terminate on December 31, 2001 (the "Upset Date") unless the Board of Directors of the Sublandlord approves a resolution extending the Term of this Sublease beyond the Upset Date.
- 2. The first sentence to paragraph 4.1 of the Sublease is hereby amended to read as follows:
 - ***4.1** Base Rent. Beginning on February 1, 2001 and continuing throughout the remainder of the Term, Subtenant shall pay to Sublandlord Three Thousand Dollars (\$3,000.00)(the "Base Rent")."
- 3. Except as expressly modified herein, all other terms, conditions, and covenants of the Sublease shall remain in full force and effect.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.



SUBTENANT: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

SUBLANDLORD:/

The Treasure Island Development Authority

By: Director

Approved as to Form

Deputy City Attorney







TREASURE ISLAND DEVELOPEMNT AUTHORITY City and County of San Francisco

Agenda Item No. 9

February 13, 2002

Subject:

Resolution authorizing the Authority to extend a month-to-month sublease with W Wong Construction for Building 62 for a period

not to exceed 12 months

Staff Contact:

London Breed, Development Specialist 274-0665

SUMMARY OF PROPOSED ACTION

Staff requests the Authority to adopt a resolution to continue a month-to-month sublease with W Wong Construction for the use of Building 62 on the same terms as the original sublease dated July 1, 1999 for an additional period not to exceed 12 months.

DICUSSION

The sublease provides for use of a portion of Building 62 by W Wong Construction for storage of office-related equipment, files, and records and for no other purpose. The subtenant does not permit any persons to enter or occupy the premises, except for periodic access to the materials stored in the premises, as provided in section 6.2 of the Sublease. On February 9, 2000 and September 13, 2000, the Authority approved an extension in each case for an additional six months. On March 29, 2001, the Authority approved an extension for an additional twelve months that expires on February 28, 2002. W Wong Construction is requesting an extension for an additional twelve months. The monthly base rent for the facility is two thousand dollars (\$2,000.00). Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of this Sublease on a month-to-month basis for an additional twelve month term requires Authority approval.

RECOMMENDATION

Staff recommends approval for the Authority to continue a month-to-month sublease with W Wong Construction for an additional twelve months. Further continuation of the sublease beyond February 28, 2002 would require additional Authority approval.

EXHIBITS

Original Sublease dated July 1, 1999



FILE NO.	

RESOLUTION NO

1 [Continuation of Month-to-Month Sublease of Building 62]

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND A THE SUBLEASE FOR BUILDING 62 WITH W. WONG CONSTRUCTION COMPANY INC. ON A MONTH-TO-

MONTH BASIS FOR A PERIOD NOT TO EXCEED TWELVE MONTHS

WHEREAS, on July 1, 1999, the Authority's Executive Director, acting under Section 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property, adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-month sublease (the "Sublease"), a copy of which is attached hereto as Exhibit A, with W. Wong Construction Inc. ("Subtenant") for the use of a portion of Building 62 (the "Premises") for the storage of files and records and office related equipment, at a rental rate of Two Thousand Dollars (\$2,000) per month; and

WHEREAS, under Section 10 of the Transfer Rules, even a month-to-month sublease has to be separately approved by the Authority if the cumulative term of such sublease exceeds six months; and

WHEREAS, on February 9, 2000 and September 13, 2000, the Board of Directors of the Authority approved and authorized the continuation of the Sublease on a month-to-month basis for another six months; and

WHEREAS, on March 29, 2001, the Board of Directors of the Authority approved and authorized the continuation of the Sublease on a month-to-month basis for another twelve months; and



WHEREAS, the approved twelve month extension has expired, and Subtenant wishes to continue to occupy the Premises under the Sublease for at least another twelve (12) months; now therefore be it

RESOLVED: That the Board of Directors hereby approves and authorizes the

RESOLVED: That the Board of Directors hereby approves and authorizes the continuation of the Sublease on a month-to-month basis for up to another twelve (12) months, provided that nothing herein shall limit the Authority's ability to terminate the Sublease on thirty days notice as provided in the Sublease and provided further that any continued occupancy of the Premises under the Sublease past February 28, 2003 shall require the separate approval of the Authority.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on February 13, 2002.

William Fazande





SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

W Wong Construction Co., Inc. as Subtenant

For the Sublease of

Building 62 at Treasure Island Naval Station San Francisco, California

July 1, 1999

TREASURE ISLAND SUBLEASE

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LIST OF EXHIBITS:

EXHIBIT A -- Master Lease

EXHIBIT B -- Drawing of Premises

EXHIBIT C -- Seismic Report

EXHIBIT D -- Rules and Regulations EXHIBIT E -- Utilities

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of July 1, 1999, is by and between the Treasure Island Development Authority ("Sublandlord" or "Authority") and W. Wong Construction Co., Inc., a California corporation ("Subleanant"). From time to time. Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

- A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease (the "Master Lease"), a copy of which is attached hereto as <u>Exhibit A</u>, under which the Master Landlord leased to Sublandlord Building 62 (the "Building") located on Naval Station Treasure Island (the "Property"), together with a non-exclusive right to use certain parking adjacent to the Building, but no other (the "Parking"), all as more particularly shown on <u>Exhibit B</u> attached hereto (together, the "Premises").
- B. Subtenant desires to sublet all of the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. PREMISES

1.1. <u>Subleased Premises</u>. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon and the non-exclusive right to use the Parking, all as shown on <u>Exhibit B</u>.

1.2. As Is Condition of Premises.

(a) Inspection of Premises. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report and the Structural Report referenced in Section 1.2(c) below and the Joint Inspection

Report referenced in Section 6 of the Master Lease. Subtenant further represents and acknowledges that Subtenant has conducted independent investigations by qualified professionals which determined that the load bearing capacity of the floors in the Building are sufficient to support the materials to be stored therein pursuant to this Sublease.

- As Is; Disclaimer of Representations. Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and/or otherwise permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.
- (c) Seismic Report. Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on the Property and affecting the Building and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or

more feet and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

2. COMPLIANCE WITH MASTER LEASE

- 2.1. <u>Incorporation by Reference</u>. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein
- 2.2. <u>Conflict</u>. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then for purposes of determining the rights and obligations of the Sublandlord and the Subtenant insofar as they relate to one another, the terms of the Master Lease shall govern.
- 2.3. Compliance with Master Lease. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any work, services, repairs, repainting, restoration, the provision of utilities, ventilation or airconditioning services, or the performance of any of Sublandlord's or Master Landlord's obligations under the Master Lease.
- 2.4. <u>Automatic Termination</u>. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

TERM

- 3.1. Term of Sublease. The term of this Sublease shall commence on July 1, 1999 (the "Commencement Date") and continue on a month-to-month basis until either party elects, in its respective sole and absolute discretion, to terminate this Sublease by giving the other party at least thirty (30) days written notice, unless sooner terminated pursuant to the terms of this Sublease. Notwithstanding the foregoing, the Sublease shall not extend beyond December 31, 1999 and Subtenant may not hold over or otherwise occupy the Premises beyond such date.
- 3.2. <u>Effective Date</u>. This Sublease shall become effective on the date (the "Effective Date") upon which the Parties hereto have duly executed and delivered this Sublease.

4. RENT

- 4.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Two Thousand Dollars (\$2,000.00) per month (the "Base Rent"). Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall prorated based on a thirty (30) day month.
- 4.2. Additional Charges. In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to Subtenant's use of the Premises, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".
- 4.3. Late Charge. If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.
- 4.4. <u>Default Interest</u>. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the ten percent (10%) or the interest rate in effect which has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 32 of the Master Lease. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

5. TAXES, ASSESSMENTS AND OTHER EXPENSES

5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

- (a) Payment Responsibility. Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.
- (b) <u>Taxability of Possessory Interest</u>. Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.
- (c) No Liens. Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.
- (d) <u>Reporting Information</u>. Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.
- 5.2. Evidence of Payment. Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.
- 5.3. Other Expenses. This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.

6. USE; COVENANTS TO PROTECT PREMISES

6.1. <u>Subtenant's Permitted Use</u>. Subtenant may use the interior of the Building located on the Premises for storage of files and records and office related equipment only, and for no other purpose. BECAUSE OF CONCERNS REGARDING POTENTIAL SEISMIC

HAZARDS RELATED TO THE STRUCTURAL CONDITION OF THE PREMISES, SUBTENANT SHALL NOT PERMIT ANY PERSONS TO ENTER OR OCCUPY THE PREMISES, EXCEPT FOR PERIODIC ACCESS TO THE MATERIALS STORED IN THE PREMISES, AS PROVIDED IN SECTION 6.2 BELOW. Subtenant may use the parking areas described on Exhibit B for parking only. Any other use of such parking area is strictly prohibited.

- 6.2. <u>Subtenant's Access to the Premises</u>. Subtenant may not occupy the Premises. Subtenant will have access to the Premises only to add and remove materials contained therein and to ensure that such materials remain stored in a reasonably satisfactory condition. Subtenant may not perform any work on or related to such materials within the Premises, including, without limitation, any substantial review or cataloguing of such materials.
- 6.3. <u>Rules and Regulations</u>. Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as <u>Exhibit D</u>, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.
- 6.4. Easements. This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 28 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities
- 6.5. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however,

in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operations hereunder.

6.6. No Unlawful Uses, Nuisances or Waste.

Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property.

7. ALTERATIONS

- 7.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions in, to or about the Premises (together, the "Alterations") without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.
- 7.2. <u>Historic Properties.</u> Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to the Building (i) which will affect the historic characteristics of the Building or modify the appearance of the exterior of the Building without Master Landlord's and Sublandlord's prior written consent or (ii) if such Alterations would preclude qualifying the Building for inclusion on the National Register for Historic places.
- 7.3. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 7 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the

provisions of this Section 7, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.

- 7.4. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.
- 7.5. Sublandlord's Alterations of the Building and Building Systems. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

8. REPAIRS AND MAINTENANCE

- Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction. provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date or in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty not caused by Subtenant. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.
- 8.2. <u>Utilities</u>. Sublandlord shall provide the basic building utilities and services described in <u>Exhibit E</u>. (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay as Additional Charges,

without set of or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

- 8.3. Floor Load. Without Sublandlord's prior written consent, which Sublandlord may give or refuse in its sole discretion, Subtenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building. If Sublandlord consents to the placement or installation of any such machine or equipment in the Premises, Subtenant at its sole expense shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Sublandlord and otherwise in compliance with Section 7 [Alterations] to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural support will be occasioned thereby.
- 8.4. Other maintenance Services. Without limiting any of its other obligations hereunder, Subtenant shall provide and perform, at its sole cost, (i) reasonable janitorial services for the Premises, (ii) pest control services required within the Premises, and shall keep the Premises free of all pests at all times and (iii) shall deposit all trash into designated containers in the Building and shall pay for the removal of trash from such designated containers.
- 8.5. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens.

Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

10. COMPLIANCE WITH LAWS

10.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises (including, without limitation, in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty not caused by Subtenant), unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10.2. Regulatory Approvals.

Responsible Party. Subtenant understands and agrees that Subtenant's (a) use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ('Indemnify") the Sublandlord, the City and County of San Francisco ("City"") and the Master Landlord including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

10.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

11. ENCUMBRANCES

11.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

12. DAMAGE OR DESTRUCTION

- 12.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.
- 12.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there

shall be no abatement in the Rent payable hereunder.

12.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. ASSIGNMENT AND SUBLETTING

13.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

14. DEFAULT; REMEDIES

- 14.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:
- (a) Rent. Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;
- (b) <u>Covenants, Conditions and Representations</u>. Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.
- (c) <u>Vacation or Abandonment</u>. Any abandonment of the Premises for more than fourteen (14) consecutive days; and
- (d) <u>Bankruptey</u>. The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of

creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

- 14.2. <u>Remedies</u>. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:
- (a) Terminate Sublease and Recover Damages. The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.
- (b) Appointment of Receiver. The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.
- 14.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

15.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights

against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Building due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

- (a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.
- (b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.
- (c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.
- (d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the

Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future. Laws, including, without limitation, any and all claims for relocation benefits or assistance form the Indemnified Parties under federal and state relocation assistance laws.

- (e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.
- (f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.
- (g) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with (i) any construction work or other services that Subtenant may have performed on the Property on behalf of or related to the City or the Authority, whether or not such work has been or may be invoiced or otherwise billed to the City or the Authority, or (ii) Subtenant's prior use or occupancy of any building or other property located on or about the Property.
- (h) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.
- (i) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.
- (j) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which

if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waite the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

15.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Building due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such

Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) to correct or repair any conditions that existed prior to the Commencement Date of this Sublease or in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty not caused by Subtenant.

16. INSURANCE

- 16.1. <u>Subtenant's Insurance</u>. Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following insurance:
- (a) <u>Property Insurance</u>. Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Building and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than their full replacement value.
- (b) <u>Public Liability and Other Insurance</u>. Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:
- (i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, liquor liability insurance, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises arising from earthquakes or subsidence, in an amount not less than \$1,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.
- (ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.
- (iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.
- 16.2. General Requirements. All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.
 - (a) Should any of the required insurance be provided under a claims-made

form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

- (b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be increased by Five Hundred Thousand Dollars (\$500,000) over the claims limits specified above.
 - (c) All liability insurance policies shall be endorsed to provide the following:
- (i) Cover Subtenant as the insured and the Sublandlord as an additional insured
- (ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.
- (iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.
- 16.3. <u>Proof of Insurance</u>. Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.
- 16.4. No Limitation on Indemnities. Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or

any of Subtenant's other obligations or liabilities under this Sublease.

- 16.5. <u>Lapse of Insurance</u>. Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.
- 16.6. <u>Subtenant's Personal Property</u>. Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.
- 16.7. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

17. ACCESS BY SUBLANDLORD

17.1. Access to Premises by Sublandlord.

- (a) General Access. Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.
- (b) Emergency Access. In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.
 - (c) No Liability. Sublandlord shall not be liable in any manner, and Subtenant

hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

17.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

18. SURRENDER

18.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date. ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

19. HAZARDOUS MATERIALS

19.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human

health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seg.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises . Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

19.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of

the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws, Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

19.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

20. GENERAL PROVISIONS

20.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord: Treasure Island Development Authority

Treasure Island Project Office

401 Palm Avenue Building 1, Room 217

Treasure Island

Attn: Executive Director Fax No.: 415-274-0299

with a copy to: Office of the City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682

Attn: Michael S. Cohen

Fax No.: (415) 554-4755

Notice Address of Subtenant: W. Wong Construction Co., Inc.,

3650 18th Street

San Francisco, CA 941110 Attn: Mr. Walter Wong, President

Fax No. (415) 864-3838

Notice Address of Master Landlord: Commanding Officer (Code 24)

Engineering Field Activity West Naval Facilities Engineering Command

900 Commodore Drive San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

- 20.2. Estoppel Certificates. Upon Sublandlord's request, Subtenant shall execute, acknowledge and deliver to Sublandlord, or such persons or entities designated by Sublandlord, a statement in writing certifying: (a) the Commencement Date and Term of this Sublease, (b) that this Sublease is unmodified and in full force and effect (or, if there have been modifications, that the Sublease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Sublease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information reasonably required by the Sublandlord.
- 20.3. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Two Thousand Dollars (\$2,000.00) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's

obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Sublandlord within thirty (30) days of the termination of this Sublease.

- 20.4. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.
- 20.5. Amendments. Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.
- 20.6. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.
- **20.7. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

- 20.8. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.
- 20.9. Successors and Assigns. Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.
- 20.10. <u>Brokers.</u> Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.
- 20.11. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

- **20.12.** Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.
- 20.13. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes al prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.
- 20.14. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.
- 20.15. <u>Time of Essence</u>. Time is of the essence with respect to all provisions of this <u>Sublease</u> in which a definite time for performance is specified.
- **20.16.** <u>Cumulative Remedies</u>. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.
- 20.17. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.
 - 20.18. Relationship of Parties. Sublandlord is not, and none of the provisions in this

Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

- 20.19. <u>Recording</u>. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.
- 20.20. Non-Liability of Indemnified Parties' officials, employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.
- 20.21. No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.
- 20.22. <u>Counterparts</u>. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 20.23. Master Landlord's Consent. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

21. SPECIAL PROVISIONS

- 21.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.
- 21.2. Public Transit Information. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

21.3. Non-Discrimination.

- (a) <u>Covenant Not to Discriminate</u>. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.
- (b) <u>Subleases and Other Subcontracts</u>. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of <u>subsection</u> (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.
- (c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- (d) <u>HRC Form.</u> Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, Subtenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation.
- (e) <u>Incorporation of Administrative Code Provisions by Reference</u>. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference

and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

- 21.4. No Relocation Assistance: Waiver of Claims. Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.
- 21.5. MacBride Principles Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages then to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.
- 21.6. <u>Tropical Hardwood Ban</u>. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.
- 21.7. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.
- 21.8. <u>Burma (Myanmar) Business Prohibition</u>. Subtenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative

Code. The Authority reserves the right to terminate this Sublease for default if Subtenant violates the terms of this clause.

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Subtenant to comply with any of its requirements shall be deemed a material breach of this Sublease. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit under this Sublease, or 10% of the total amount of the Sublease, or \$1,000, whichever is greatest. Subtenant acknowledges and agrees the liquidated damages assessed shall be payable to the Authority upon demand and may be setoff against any moneys due to the Subtenant from this Sublease.

21.9. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City or the Authority, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communication the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

W. Wong Construction Co., Inc., a California Corporation

by: hall

ts: ______

Date: 7-13-99

SUBLANDLORD:

The Treasure Island Authority

By: Bld Mels

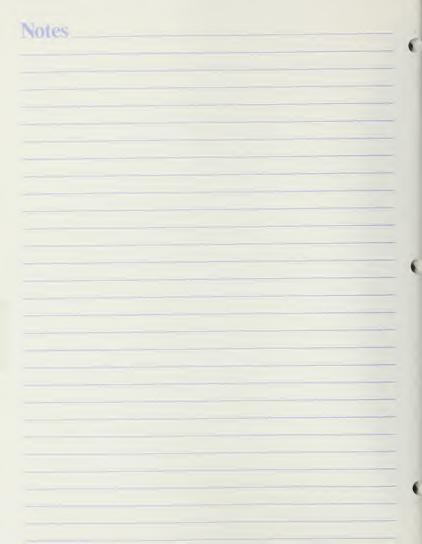
Its: _____

Date:

Approved as to Form:

Deputy City Attorney





TREASURE ISLAND DEVELOPMENT AUTHORITY City and County of San Francisco

Agenda Item No. 10

February 13, 2002

Subject:

Resolution authorizing the Authority to extend a month-to-month Sublease with Island Creative Management for Building 99 for an

additional twelve months.

Staff Contact:

London Breed, Development Specialist 274-0665

SUMMARY OF PROPOSED ACTION

The staff is requesting the Authority to adopt a resolution to continue a month-to-month sublease with Island Creative Management for the use of Building 99 on the same terms as the original sublease dated September 1, 1999 for an additional period not to exceed twelve months.

DISCUSSION

The sublease provides for use of a portion of Building 99 by Island Creative Management for building sets in television, film production, and special events. On September 13, 2000, the Authority approved a resolution to amend the original sublease to increase the monthly rental rate for additional space and extend the term. Currently, the monthly base rent is ten thousand five hundred dollars (\$10,500). On March 29, 2001, the Authority approved a resolution to extend the term for an additional twelve months. The sublease will expire February 28, 2002, and Island Creative Management is requesting a twelvemonth extension, which would be effective March 1, 2002 and expire on February 28, 2003

Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of the sublease on a month-to-month basis for an additional one-year term requires Authority approval.

RECOMMENDATION

Staff recommends approval for the Authority to continue a month-to-month sublease with Island Creative Management for an additional twelve-month term. Further continuation of the Sublease beyond February 28, 2003 would require additional Authority approval.

EXHIBITS

Original Sublease dated September 1, 1999 First Amendment to the Sublease dated August 21, 2000



[Continuation of Month-to-Month Sublease of Building 99]

AUTHORIZING THE EXECUTIVE DIRECTOR TO THE SUBLEASE FOR BUILDING 99

WITH ISLAND CREATIVE MANAGEMENT INC. ON A MONTH-TO-MONTH BASIS FOR A

PERIOD NOT TO EXCEED TWELVE MONTHS

WHEREAS, on September 1, 1999, the Authority's Executive Director, acting under Section 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property, adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-month sublease (the "Sublease"), a copy of which is attached hereto as Exhibit A, with Island Creative Management Inc. ("Subtenant") for the use of a portion of Building 99 (the "Initial Premises") for the building of sets used in television and film production and in connection with special events, at a rental rate of six thousand dollars (\$6,000) per month; and

WHEREAS, under Section 10 of the Transfer Rules, even a month-to-month sublease has to be separately approved by the Authority if the cumulative term of such sublease exceeds six months; and

WHEREAS, on February 9, 2000, the Board of Directors of the Authority approved and authorized the continuation of the Sublease on a month-to-month basis for another six months, and

WHEREAS, on August 21, 2000, the Authority's Executive Director, acting under Section 10 of the Transfer Rules, entered into an amendment to the Sublease (the "Amendment"), a copy of which is attached hereto as Exhibit B, with Subtenant for the use of an additional portion of Building 99 (the "Expansion Premises") (both the Initial Premises and the Expansion Premises are collectively referred to herein as the "Premises") on a month-to-



month basis, and the Amendment increased the rental rate for the Premises to Ten Thousand Five Hundred Dollars (\$10,500) per month; and

WHEREAS, on September 13, 2000, the Board of Directors of the Authority approved the amendment to the Sublease to increase the premises and monthly rental rate and authorized the continuation of the Sublease on a month-to-month basis for another six months; and

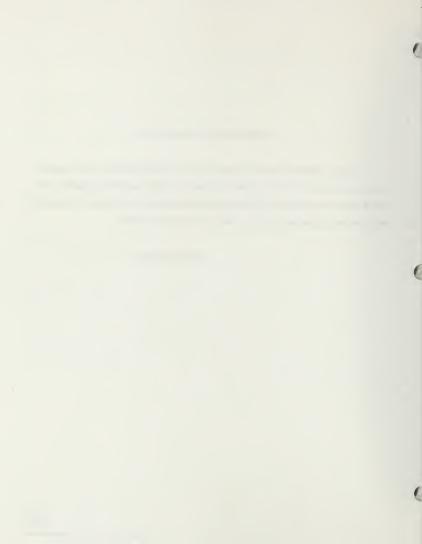
WHEREAS, on March 29, 2001, the Board of Directors of the Authority approved and authorized the continuation of the Sublease on a month-to-month basis for another twelve months, and the approved twelve month extension has expired; and

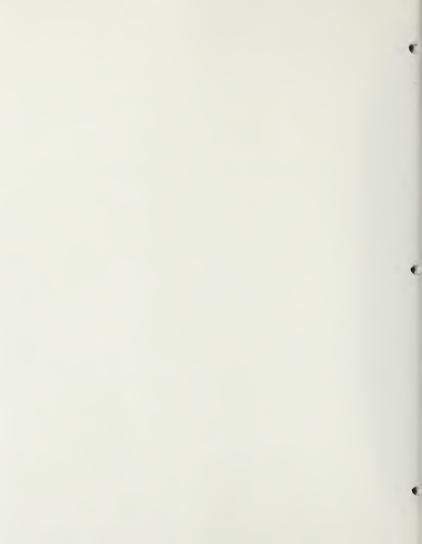
WHEREAS, Subtenant wishes to continue to occupy the Premises under the Sublease for at least another twelve months; now therefore be it

RESOLVED: That the Board of Directors hereby approves and authorizes the continuation of the Sublease, on a month-to-month basis for up to another twelve months, provided that nothing herein shall limit the Authority's ability to terminate the Sublease on thirty days notice as provided in the Sublease and provided further that any continued occupancy of the Premises under the Sublease past February 28, 2003 shall require the separate approval of the Authority.



CERTIFICATE OF SECRETARY I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on February 13, 2002. William Fazande





SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

ISLAND CREATIVE MANAGEMENT LLC as Subtenant

For the Sublease of

Building 99 at Naval Station Treasure Island San Francisco, California

September 1, 1999

TREASURE ISLAND SUBLEASE

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LIST OF EXHIBITS:

EXHIBIT A -- Master Lease

EXHIBIT B -- Drawing of Premises

EXHIBIT C -- Seismic Report
EXHIBIT D -- Rules and Regulations
EXHIBIT E -- Utilities

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this 1st of September, 1999, is by and between the Treasure Island Development Authority ("Sublandlord") and Island Creative Management, a Limited Liability Corportation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

- A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 4, 1998, as mended by that certain Amendment to Lease dated January 14, 1999, (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord on Naval Station Treasure Island (the "Property"), among other things, Building 99 (the "Building"), together with a non-exclusive right to use certain parking areas adjacent thereto, all as more particularly shown on the map attached hereto as Exhibit B (the "Premises").
- B. Subtenant desires to sublet the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. PREMISES

1.1. <u>Subleased Premises.</u> Subject to the terms, covenants and conditions of this Sublease. Sublandlord subleases to Subtenant the Premises.

1.2. As Is Condition of Premises.

(a) Inspection of Premises. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them. ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in

Inspection Report referenced in Section 6 of the Master Lease.

- As Is; Disclaimer of Representations. Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or Subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.
- (c) <u>Seismic Report.</u> Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco. (the "Seismic Report"), a copy of the cover page of which is attached hereto as <u>Exhibit C.</u> Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

2. COMPLIANCE WITH MASTER LEASE

- 2.1. <u>Incorporation by Reference</u>. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein
- 2.2. <u>Conflict</u>. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.
- 2.3. Compliance with Master Lease. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.
- 2.4. <u>Automatic Termination</u>. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

3. TERM

3.1. <u>Term of Sublease</u>. The term of this Sublease (the "Term") shall be on a month-to-month basis, shall commence on September 1, 1999 (the "Commencement Date") and, may be terminated by either party, for any reason and without liability for such termination, upon thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, this Sublease shall automatically terminate on February 28, 2000 (the "Upset Date") unless the Board of Directors of the Sublandlord approves a resolution extending the Term of this Sublease beyond the Upset Date.

4. RENT

- 4.1. <u>Base Rent</u>. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord base rent in the amount of Six Thousand Dollars (S6,000) per month (the "Base Rent"). Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall prorated based on a thirty (30) day month.
- 4.2. Additional Charges. In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to the Premises as provided in Section 4 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges shall hereinafter be referred to as the "Rent".
- 4.3. Late Charge. If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.
- 4.4. <u>Default Interest</u>. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%), provided however that interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

5. TAXES, ASSESSMENTS AND OTHER EXPENSES

5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every

description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

- (b) <u>Taxability of Possessory Interest</u>. Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.
- (c) No Liens. Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.
- (d) <u>Reporting Information</u>. Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.
- 5.2. Other Expenses. This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.
- 5.3. <u>Evidence of Payment</u>. Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

6. USE; COVENANTS TO PROTECT PREMISES

- 6.1. <u>Subtenant's Permitted Use</u>. Subtenant may use the Building as an office and for the building of sets used in television and film production and for special events, and for no other purpose.
- 6.2. Rules and Regulations. Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as <u>Exhibit D</u>, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and

regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

- This Sublease shall be subject to all outstanding easements and 6.3. Easements. rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.
- 6.4. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.
- 6.5. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises.

7. ALTERATIONS

7.1. <u>Alterations</u>. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in

Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord or by program youths and staff under the supervision of qualified professionals, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

- 7.2. <u>Historic Properties</u>. Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to the Premises (i) which will affect the historic characteristics of the Premises or modify the appearance of the exterior of the Premises without Master Landlord's and Sublandlord's prior written consent or (ii) if such Alterations would preclude qualifying the Premises for inclusion on the National Register for Historic places.
- 7.3. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.
- 7.4. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.
- 7.5. Sublandlord's Alterations of the Premises and Premises Systems.

 Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Premises, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the

Premises for purposes stated herein.

8. REPAIRS AND MAINTENANCE

- 8.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.
- 8.2. <u>Utilities</u>. Sublandlord shall provide the basic building utilities and services described in the attached <u>Exhibit E</u>. (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for fumishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set of or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in <u>Exhibit E</u>.
- 8.3. Floor Load. Without Sublandlord's prior written consent, which Sublandlord may give or refuse in its sole discretion, Subtenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Premises. If Sublandlord consents to the placement or installation of any such machine or equipment in the Premises, Subtenant at its sole expense shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Sublandlord and otherwise in compliance with Section 7.1 [Alterations] to the extent necessary to assure that no damage to the Premises or weakening of any structural support will be occasioned thereby.
- 8.4. <u>Janitorial Services</u>. Subtenant shall provide all janitorial services for the Premises.
- **8.5.** Pest Control. Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

- 8.6. <u>Trash</u>. Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as <u>Exhibit D</u>. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.
- 8.7. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof.

9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

10. COMPLIANCE WITH LAWS

10.1. <u>Compliance with Laws</u>. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety

and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10.2. Regulatory Approvals.

- Responsible Party. Subtenant understands and agrees that Subtenant's (a) use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ('Indemnify') the Sublandlord and City, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.
- 10.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

11. ENCUMBRANCES

11.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

12. DAMAGE OR DESTRUCTION

- 12.1. <u>Damage or Destruction to the Premises</u>. In the case of damage to or destruction of the Premises by earthquake, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in <u>Section 16</u> below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more than Ten Thousand Dollars (\$10,000) to repair, Subtenant may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. Except as specifically provided above, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.
- 12.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.
- 12.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. ASSIGNMENT AND SUBLETTING

13.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber,

pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

14. DEFAULT; REMEDIES

- 14.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:
- (a) <u>Failure to Pay Rent</u>. Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;
- (b) Covenants, Conditions and Representations. Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.
- (c) <u>Vacation or Abandonment</u>. Any abandonment of the Premises for more than fourteen (14) consecutive days; and
- (d) <u>Bankruptey</u>. The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.
- 14.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:
- (a) <u>Terminate Sublease and Recover Damages</u>. The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection

- (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.
- (b) Appointment of Receiver. The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.
- 14.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

- 15.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:
- (a) Subtenant expressly acknowledges and agrees that the consideration and other sums payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and

Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

- (b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.
- (c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.
- (d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance form the Indemnified Parties under federal and state relocation assistance laws.
- (e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

- (f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.
- (g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.
- (h) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.
- (i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

15.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Premises due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Premises, (f)

any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

16. INSURANCE

- 16.1. <u>Subtenant's Insurance</u>. Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following insurance:
- (a) <u>Property Insurance</u>. Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Premises and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.
- (b) <u>Public Liability and Other Insurance</u>. Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:
- (i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises, in an amount not less than \$5,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

- (ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.
- (iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.
- 16.2. General Requirements. All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.
- (a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.
- (b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.
 - (c) All liability insurance policies shall be endorsed to provide the following:
- (i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.
- (ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

- (iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.
- 16.3. <u>Proof of Insurance</u>. Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.
- 16.4. <u>No Limitation on Indemnities</u>. Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.
- 16.5. <u>Lapse of Insurance</u>. Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.
- **16.6.** <u>Subtenant's Personal Property.</u> Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

17. ACCESS BY SUBLANDLORD

17.1. Access to Premises by Sublandlord.

- (a) <u>General Access</u>. Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.
- (b) Emergency Access. In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any

such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

- (c) No Liability. Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant's Invitees.
- 17.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

18. SURRENDER

18.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.4 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

18.2. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this

Sublease a security deposit in the amount of Ten Thousand Dollars (\$10,000) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 18.2, Sublandlord shall return such security deposit to Sublandlord within forty-five (45) days of the termination of this Sublease.

19. HAZARDOUS MATERIALS

19.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that. because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal,

discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

19.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

20. GENERAL PROVISIONS

with a copy to:

20.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord Treasure Island Development Authority

Treasure Island Project Office

401 Palm Avenue Building 1, Room 237

Treasure Island Attn: Executive Director Fax No.: 415-274-0662

Office of the City Attorney City Hall, Second Floor 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Attn: Michael S. Cohen Fax No.: (415) 554-4755

Notice Address of Subtenant: Island Creative Management LLC

470 Avenue H Treasure Island

San Francisco, CA 94130 Attn: Chris Kelly Fax No.: 707-557-6973

Notice Address of Master Landlord: Commanding Officer (Code 24)

Engineering Field Activity West

Naval Facilities Engineering Command

900 Commodore Drive San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice..

- 20.2. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment for any sums due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.
- 20.3. Amendments. Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.
- 20.4. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.
- 20.5. <u>Joint and Several Obligations</u>. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.
 - 20.6. <u>Interpretation of Sublease</u>. The captions preceding the articles and sections of

this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

- 20.7. Successors and Assigns. Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.
- 20.8. <u>Brokers</u>. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.
- 20.9. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

- 20.10. <u>Governing Law</u>. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.
- 20.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes al prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.
- 20.12. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.
- **20.13.** <u>Time of Essence</u>. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.
- **20.14.** <u>Cumulative Remedies</u>. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.
- 20.15. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.
- 20.16. <u>Relationship of Parties</u>. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint

venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

- **20.17.** Recording. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.
- 20.18. Non-Liability of Indemnified Parties' officials, employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.
- **20.19.** No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.
- **20.20.** Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- **20.21.** <u>Master Landlord's Consent.</u> This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

21. SPECIAL PROVISIONS

- 21.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.
- 21.2. <u>Public Transit Information</u>. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

21.3. Non-Discrimination.

- (a) <u>Covenant Not to Discriminate</u>. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.
- (b) <u>Subleases and Other Subcontracts</u>. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of <u>subsection</u> (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.
- (c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- (d) HRC Form. Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC").
- (e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters.

Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

- 21.4. No Relocation Assistance: Waiver of Claims. Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.
- 21.5. MacBride Principles Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages then to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.
- 21.6. <u>Tropical Hardwood Ban</u>. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.
- 21.7. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.
- 21.8. <u>Burma (Myanmar) Business Prohibition</u>. Subtenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. Sublandlord reserves the right to terminate this Sublease for default if Subtenant violates the terms of this clause. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of

Subtenant to comply with any of its requirements shall be deemed a material breach of this Sublease. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit under this Sublease, or 10% of the total amount of the Sublease, or \$1,000, whichever is greatest. Subtenant acknowledges and agrees the liquidated damages assessed shall be payable to the Sublandlord upon demand and may be setoff against any moneys due to the Subtenant from this Sublease.

- 21.9. Prevailing Wages for Construction Work. Subtenant agrees that to the extent any person performing labor in the construction of the Alterations required under Section 7 [Alterations] is paid wages for such labor, such person shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant turther agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.
- 21.10. <u>Prohibition of Tobacco Advertising.</u> Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communication the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

Island Creative Management
a Limited Liability Corporation

By: Challes

SUBLANDLORD:
Treasure Island Development Authority

Its:

ANNEMARIE CONROY
Executive Director
Treasure Island Development
Authority Project

Approved as to Form:

City Attorney







FIRST AMENDMENT TO SUBLEASE between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

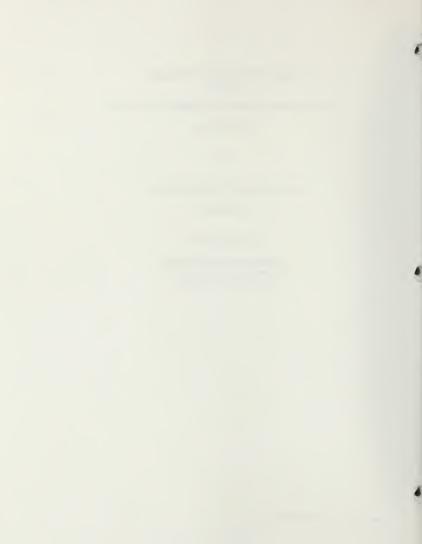
and

ISLAND CREATIVE MANAGEMENT

as Subtenant

For the Sublease of

10,500 square feet in Building 99 at Naval Station Treasure Island San Francisco, California



FIRST AMENDMENT TO TREASURE ISLAND SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (the "First Amendment"), dated as of this 21st day of August 2000, is by and between the Treasure Island Development Authority ("Sublandlord") and Island Creative Management ("Subtenant")

This Sublease is made with reference to the following facts and circumstances:

- A. Subtenant and Sublandlord entered into that certain sublease, dated September 1, 1999 (the "Original Sublease", and as amended by this First Amendment to the "Sublease"), for the use and occupancy of portions of Building 99 located on Treasure Island, all as more particularly shown on the map attached to the Original Sublease as Exhibit B (the "Original Premises").
- B. Subtenant and Sublandlord desire to amend the Original Sublease to expand the Original Premises and increase the rent due and owing therefor.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

- 1. <u>Defined Terms</u>. Capitalized terms not separately defined herein shall have the same meaning provided in the Original Sublease.
- 2. Expansion Premises. The Original Premises described in Section 1.1 of the Original Sublease are hereby amended to include, in addition to the 6,000 square feet of the Original Premises, an additional 4,500 square feet, for a total of 10,500 square feet within Building 99, all as shown on Exhibit A attached hereto (the "Expansion Premises", and together with the Original Premises, the "Premises").
- 3. <u>Base Rent for Premises</u>. As of the date of this First Amendment, the Base Rent for the Premises under the Sublease, including the Expansion Premises, shall be increased from Six Thousand Dollars (\$6,000) per month to Ten Thousand Five Hundred Dollars (\$10,500) per month.
- 4. Terms and Conditions of Original Sublease Remain in Force and Effect. Except as specifically amended hereby, the terms and conditions of the Original Sublease, as amended by this First Amendment, shall remain in full force and effect. Without limiting the generality of the foregoing and notwithstanding anything contained in this First Amendment, Subtenant acknowledges and agrees that the Sublease is currently on a month-to-month basis and continuation of the Sublease on a month-to-month basis beyond September 1, 2000 requires the Board of Directors of the Sublandlord to approve a resolution extending the Term of this

Sublease beyond such date.

5. <u>Counterparts</u>. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Sublandlord and Subtenant have executed this First Amendment as of the date first written above.

SUBTENANT:

ISLAND CREATIVE MANAGEMENT

By: Chul Coff.
Its: General Partner

SUBLANDLORD:

THE TREASURE ISLAND DEVELOPMENT

By: Annemarie Conyoy

Its: Executive Director

Approved as to Form:

Deputy City Attorney





AGENDA ITEM Treasure Island Development Authority City and County of San Francisco

Subject: Presentation of Focused Request for Proposal

Agenda Item No. 11 Meeting of February 13, 2002

For a Primary Developer to be Issued to
Treasure Island Community Development for
Development of Former Naval Station Treasure Island

Contact/Phone: Annemarie Conroy, Executive Director

Stephen Proud, Director of Development

274-0660

BACKGROUND

On June 14, 2000, the Authority authorized the issuance of a Request for Qualifications for a Primary Developer ("Primary Developer RFQ") for former Naval Station Treasure Island. On October 27, 2000, staff issued approximately 500 copies of the Primary Developer RFQ to interested parties. Staff held a pre-submittal meeting on Treasure Island on December 5, 2000 to address questions from potential respondents regarding the RFQ process. Submittals for the RFQ were due to the Authority office on February 1, 2001. On that date, the Authority received two responses to the RFQ, which were distributed to the Authority Board members for review. The two responses were from Navillus Associates and Treasure Island Community Development ("TICD").

On July 11, 2001, Authority staff presented the findings of an independent review of the two proposals conducted by Keyser Marston Associates, working in conjunction with Arthur Andersen and Dean Macris. The conclusions reached by the consultant team, with the concurrence of staff, was that TICD met all the evaluation criteria set forth in the RFQ and thus is an entity that could assume the responsibility of Primary Developer for Treasure Island, and that the Navillus did not meet the evaluation criteria.

Given the low response rate to the RFQ, the Authority directed staff to conduct a brief study to assess the possible reasons for the lack of developer interest and make recommendations regarding how to proceed. On September 12, 2001, staff presented the findings of a report prepared by Bay Area Economics that concluded there are no 'quick fixes' the Authority can undertake to improve the development climate at Treasure Island. To avoid delay and to better assess whether proceeding with TICD's best achieves the Authority's goals, the Authority authorized staff to proceed with the original solicitation process by preparing a focused Request for Proposal ("RFP") for the Board's consideration. Depending on its assessment of TICD's proposal, the Authority will decide whether to enter into exclusive negotiations with TICD or seek an alternative approach to the redevelopment of Treasure Island.



REQUEST FOR PROPOSAL

The draft RFP (attached as Exhibit A) requires TICD to submit a proposal that would allow the Authority and the community to evaluate TICD's plans for Treasure Island. Staff will review the RFP with the Authority Board to solicit input, which will be incorporated in the document and presented to the Authority Board for approval. If approved, the RFP will be issued to Treasure Island Community Development.

The RFP requires detailed information to address the following:

- Development Concept. TICD must present its development concept and phasing plan
 for the Island. The development concept and phasing plan should outline TICD's
 approach to issues related to affordable housing, infrastructure & utilities, access,
 circulation, parking, seismic conditions, deconstruction/demolition, and community
 facilities.
- Urban Design/Historic Preservation. The proposal must describe TICD's overall
 approach to urban design and historic preservation for the project and for individual
 phases. The proposal should include a discussion of TICD's approach to cultural and
 historic resources and how the program meets the basic tenets of sustainable design
 and smart growth.
- Financial Proposal. As part of its submittal, TICD must include a financial proposal
 that sets forth principal business terms, which will serve as the basis for negotiating a
 term sheet and subsequent final transaction documents. The financial proposal must
 include a proforma demonstrates financial feasibility of the proposal, a description of
 the proposed transaction structure, an outline of the proposed financing plan, and a
 description of the guarantees that will be provided to the Authority.
- Management of Interim Uses. The submittal must describe TICD's approach to
 property management for parcels of land that have not been conveyed buy the Navy.
- Community Benefits Program. The proposal must include a description of a proposed Community Benefit Program that address such issues as job training, education and hiring programs, economic opportunities for TIHDI, public open space and recreation facilities and programs, community and cultural facilities, etc.
- Community Outreach Program. TICD must set forth a proposed Community Outreach Program, including a description of the proposed approach to achieving community consensus for the development concept.
- Development Team. TICD must document and provide information on any changes
 to the development team, which may have occurred since their response to the RFQ.
 In addition, TICD must provide additional information on the organizational structure
 of the team and responsibilities and the decision making process among the team
 members.



EVALUATION PROCESS

Staff is proposing a two-step process for the evaluation of the RFP response. This process would allow TICD to submit an initial proposal to the Authority and make presentations of the proposal to the Authority, members of a review committee (established by the Executive Director), and the TI/YBI Citizen's Advisory Board. Subsequent to those presentations, TICD will be given an opportunity to revise its proposal to address issues and concerns raised at those meetings, and a final proposal would be submitted to the Authority for its consideration. A review committee will evaluate and summarize the submittal prepared by TICD, based on the detailed evaluation criteria set forth in the RFP which are grouped into three categories: Project Feasibility and Timing, Land Use/Urban Design, and Economic Development/Fiscal Impacts to the City.

The analysis of the Review Committee will be presented to the Authority for its consideration at a public hearing. The Authority Board will make the final decision as to whether to proceed with TICD or take such other action as the Authority may decide in its sole and absolute discretion. If the Authority, based on TICD's final proposal, elects to proceed with TICD as a potential Master Developer for Treasure Island, the Authority will enter into an Exclusive Negotiations Agreement ("ENA") with the TICD, pursuant to which TICD will have the exclusive right to negotiate with the Authority the final transaction documents for the project.





DRAFT

TREASURE ISLAND DEVELOPMENT AUTHORITY

REQUEST FOR PROPOSAL

FOR

FORMER NAVAL STATION TREASURE ISLAND

March 2002

Claudine Cheng, President

William Fazande, Vice -President

John Elberling

Gerald Green

Susan Po-Ruffino

Marsha Rosen

Doug Wong

Annemarie Conroy, Executive Director



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I. INTRODUCTION

On October 27, 2000, the Treasure Island Development Authority (the "Authority") issued a Request for Qualifications ("RFQ") for a Primary Developer for former Navai Station Treasure Island ("Treasure Island" or the "Base"). In response, the Authority received submittals from Navillus Associates and Treasure Island Community Development ("TICD").

Following an independent review of the two proposals, the Authority determined that only TICD met the evaluation criteria set forth in the RFQ and was thus deemed qualified to submit a proposal for the Authority's consideration. This document sets forth the guidelines and requirements for a proposal from TICD for the redevelopment of Treasure Island that is consistent with the development opportunity described in the RFQ. Those guidelines and requirements are based primarily on the goals and objectives set forth in the Draft Reuse Plan (summarized in Exhibit A to this RFP) and in information contained in the RFQ.

The Authority envisions that TICD's proposal will evolve through an iterative process with interaction between TICD and Authority staff, members of the Treasure Island/Yerba Buena Island Citizens Advisory Board (CAB), interested members of the public, and the Treasure Development Authority Board. Ultimately. TICD's proposal will be submitted to the Authority Board for consideration. If TICD's proposal is deemed acceptable, the Authority will enter into an Exclusive Negotiating Agreement ("ENA") with TICD. TICD's proposal will provide the basis for preparing transaction and development agreements for Treasure Island, but final terms and conditions will be subject to further negotiations during the term of the ENA.

If TICD's proposal is not deemed acceptable, the Authority may consider alternative means for proceeding with the redevelopment of Treasure Island.

TICD should refer to the RFQ document and relevant background materials already provided for pertinent information regarding the planning objectives for the site, the development opportunity, existing conditions and market information, special development considerations, and the anticipated role of the Primary Developer at Treasure Island.



II. PROPOSAL SUBMISSION REQUIREMENTS

In 1994, a Citizen's Reuse Committee ("CRC"), representing a broad spectrum of community interests, was formed to review reuse planning efforts regarding Treasure Island by the San Francisco Planning Department and the San Francisco Redevelopment Agency, and to make future recommendations. In July 1996, the Draft Reuse Plan (the "Reuse Plan") for Treasure Island Naval Station was unanimously endorsed by the Mayor, Board of Supervisors, Planning Commission and the Citizens Reuse Committee.

The Reuse Plan identifies certain goals and objectives for the redevelopment of Treasure Island (a summary is attached as Exhibit A). In general, the Reuse Plan is built around the concept of providing increased public access, recreational, and entertainment opportunities at Treasure Island, while creating jobs and providing sustainable economic opportunities for San Francisco. The Reuse Plan identified a number of broad land uses categories for the Treasure Island, including a mix of recreation and visitor-oriented entertainment uses, hotel and conference facilities, restaurants, parks, sportsfields, a marina, film production and housing. The Reuse Plan also contemplates the interim reuse of a number of existing buildings, including public facilities and housing, to maximize the public investments that have been made in them, provide public benefits, and help support the property's successful redevelopment.

Any proposal for redeveloping Treasure Island must be consistent with the goals and objectives set forth in the Reuse Plan and the Land Use Guidelines and Development Considerations described in the RFQ. For the Authority to effectively evaluate TICD's proposal against these criteria, TICD's proposal should address each of the following:

A. DEVELOPMENT CONCEPT

Land Uses and Development Programs

The proposal must include a description (in narrative form) of TICD's approach to each type of land use and development proposed for Treasure Island, which may include the following uses: (1) hospitality, (2) entertainment, retail and other commercial uses. (3) cultural and educational, (4) residential, and (5) recreation and open space. The land use plan must correspond with financial proposal and business plan outlined in Section II C

For each type of land use, the proposal must (i) include a graphic depiction that shows the location of the proposed use, (ii) describe the expected types of activities, projects and tenants. (iii) describe the anticipated total gross building square footage or unit count by phase and at the end of the full build-out and the total acreage devoted to such use, (iv) describe TICD's general approach to height, density and massing of buildings, and (v) describe the compatibility of the use with adjoining/existing uses on



both a short-term and long-term basis (e.g., Job Corps, Coast Guard, Marina, etc.).

It is important to note the applicability of the Tidelands Trust and the rules governing No-Cost Economic Development Conveyances (particularly as they relate to any plans for new housing). The principles of public uses underlying the Tidelands Trust were among the most important factors shaping the Reuse Plan. Accordingly, the proposal must describe how development will expand public access to the shoreline and enhance views of the Bay and how the development program responds to the requirements of the Bay Plan as administered by the Bay Conservation and Development Commission ("BCDC") and Tidelands Trust as administered by the State Lands Commission.

In addition to the foregoing, for any proposed residential uses, the proposal must include the following: (i) expected mix of ownership and rental housing and levels of affordability (as described below in Section II.A.3), (ii) a description of how the housing program is consistent with the provisions set forth in the Treasure Island Homeless Development Initiative ("TIHDI") agreement, (iii) a description of how the housing program is consistent with the goals and policies set forth in the Reuse Plan, including the acreage dedicated to housing and the total unit count, (iv) a description of how the housing program is consistent with the provisions of the No-Cost Economic Development Conveyance transfer of property from the Navy (as described in the RFQ), and (viii) a discussion of a Trust Exchange that would allow the housing program to comply with Tidelands Trust and Bay Plan requirements.

In addition, if new housing is contemplated, either to replace existing units, add new units, or some combination of both, it will be necessary to remove the Tidelands Trust designation from those areas of Treasure Island proper where new units are to be constructed. In general, removing the Tidelands Trust designation would likely involve a "exchange" or "swap" of the Trust designation from Treasure Island proper onto portions of Yerba Buena Island. A summary of the key principles governing a Tidelands Trust exchange at Treasure Island is provided in the Appendix to the RFQ. Among other things, the proposal should describe any proposed exchange of the Tidelands Trust and how such an exchange meets the requirements described in the RFQ. The proposal should include a graphic depiction of the proposed configuration of the Trust Exchange and describe the number of acres included from "sending" and "receiving" sites.

2. Phasing Plan

TICD's proposal must include a preliminary phasing plan and estimated development schedule, including pre-development and development



activities, indicating in number of months the estimated time each portion of the project is expected to take.

The preliminary phasing plan shall depict graphically and in narrative form the rational behind the phasing of the development program, including a discussion of:

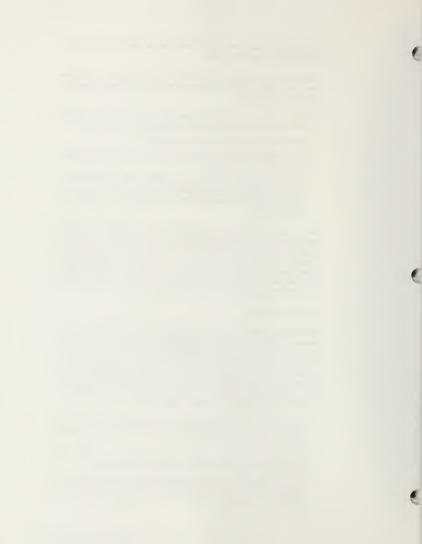
- ✓ The phasing of infrastructure, seismic improvements, and other elements of horizontal land development (see Items 7 & 8 below);
- ✓ The phasing of vertical development elements;
- How phasing is affected by the timing and manner of environmental remediation at Treasure Island:
- How the phasing plan ensures the compatibility of uses throughout the development process, including how existing uses and lessees (e.g., the Job Corps) will be incorporated into the project on an interim and long term basis.

The Phasing Plan should also include a general description of TICD's overall approach to the project and which portions of the development program TICD will be involved with. For example, the proposal should describe if TICD expects to simply provide the backbone infrastructure to a large parcel that would be disposed of to a third-party developer, or does TICD expect to build in-tract infrastructure and/or conduct the final vertical development at the site, or a combination of both.

3. Affordable Housing

The Authority is committed to providing a full range of affordable housing options at Treasure Island. As noted above, TICD's proposal should indicate the total number of affordable units within each phase of development and the levels of affordability. More specifically, TICD's proposal should discuss how TICD will address the minimum housing requirements in the TIHDI agreement set forth below, and what efforts TICD would make to expand the number of units and range of affordable housing options beyond the minimum requirements:

- TICD's approach to the existing TIHDI units and whether or not TICD intends to exercise the "buy-out" provision in the TIHDI agreement for any of the units on TI or YBI;
- The amount of acreage which will be set aside for TIHDI for affordable housing (based on any new housing proposed); and
- TICD's plan for inclusionary affordable housing that meets the 15% standard set forth in the TIHDI agreement and the tenure (rental vs. ownership) of those units.



4. Access, Transportation, Circulation and Parking

Issues of access and transportation are among the most critical considerations for the development of Treasure Island. Therefore, the proposal must contain a detailed transportation plan that maximizes mobility for area residents, employees, and visitors to the island, helps guide development and improves the environment, and fosters connections between Treasure Island and the rest of San Francisco. Consistent with this guideline, the proposal must identify:

- The "On-Island" transportation network including vehicular and pedestrian circulation pattern, bicycle and pedestrian systems, trafficcalming measures, intra-Island transit services, and the development of alternative fuel and/or electric charging stations.
- A plan for access to and from Treasure Island, San Francisco and East Bay Communities that utilizes transit modes other than autos. The proposal should discuss how water transit service would be integrated into the transportation network as a means of access to the Island and the role TICD will assume in providing water transit service to the Island. Options include, but are not limited to, ferry transit and water taxis consistent with the Bay Council's recently adopted Regional Water Transportation Plan
- A parking plan that sets forth the amount of parking to be provided for each type of land use, the manner in which parking will be provided and specifically how shared parking arrangements will be incorporated into the overall development program.

5. Infrastructure Rehabilitation/Replacement Program

One of the most common issues associated with military base conversion involves the transfer of infrastructure systems that have been developed and maintained by the military to standards that are different than those utilized by civilian agencies. Thus, the proposal must include a description of proposed infrastructure improvements for each phase of the project through build-out. TICD must describe how the proposed improvements to the various infrastructure systems will incorporate sustainable design elements to minimize impacts to the environment (e.g., capturing storm water runoff in a fresh water treatment wetland prior to discharge to the Bay).



Seismic and Geotechnical Conditions

Treasure Island proper (excluding most of Yerba Buena) was created using non-engineered fill and as result, is expected to perform poorly during a major seismic event. In the event of an earthquake of magnitude 7 or greater, there is a significant risk that existing buildings and other structures and improvements located on Treasure Island, without further improvements, may fail structurally and collapse. Of particular concern are the perimeter dikes that surround Treasure Island. In the event of a seismic occurrence, these dikes may experience structural failure resulting in severe damage to the Island.

Although Treasure Island fared well in the 1989 Loma Prieta earthquake, long-term development of Treasure Island will require careful planning to address seismic conditions. While efficiencies may be gained through improving large areas of Treasure Island at the same time, the entire land area of Treasure Island does not necessarily need to be improved in one single step and all at once. It may be possible to phase improvements to allow incremental development to occur over time and, depending on the nature of the proposed long-term uses, some of the areas may require less substantial seismic improvements.

As noted above, the proposal must indicate TICD's approach to seismic conditions at Treasure Island to improve public safety and the phasing of those improvements. The proposal should identify the construction techniques that will be used, and should differentiate between improvements to existing buildings, improvements to the perimeter dike and causeway, and improvements related to new buildings/facilities.

7. Demolition and Deconstruction

TICD must identify buildings they intend to demolish/deconstruct as part of the development program. TICD shall describe the program for deconstruction, demolition and material, reuse, including community participation in such program. The deconstruction program shall address state law requiring that the City achieve significant reduction in its landfill waste.

Community Facilities and Services

The proposal must identify proposed community facilities, such as police, fire, school. library, etc. and describe how TICD will provide and maintain appropriate community services and facilities for area residents, employees and businesses during all phases of development.



B. URBAN DESIGN/HISTORIC PRESERVATION

Redevelopment of Treasure Island requires careful consideration of the context within which the project will take place. While many of the buildings and facilities may be demolished/deconstructed to create functional and desirable development sites, there are several existing uses and historic and cultural resources that must be woven into the built environment. As Treasure Island embarks on its "third life", a conscious and purposeful effort will be required to change the character of the facility from a post war military installation to a destination that is an integral part of the City's urban fabric.

Design considerations include the restoration and creation of public spaces and amenities, heightening the sense of immediacy between the Island and the City, designing new facilities and structures that compliment and unify disparate functional and architectural elements, and the preservation of structures and places of significant historic interest.

In addition, the redevelopment of Treasure Island represents an outstanding opportunity to incorporate the best practices of sustainable design and smart growth into a land use and urban design program. These may include such elements as energy conservation, development of "green buildings", reuse and recycling of building materials, preservation and expansion of open space, multimodal transit, a mix of land uses, etc.

The proposal must describe TICD's overall approach to urban design for the project and for individual phases. The proposal should include a discussion of TICD's approach to cultural and historic resources and how the program meets the basic tenets of sustainable design and smart growth. To assist in the evaluation, the proposal should include perspectives, graphics and /or other images that conceptually illustrate the proposed urban design elements (e.g., building types, initial building character and siting, key identity elements amenities and other features, etc.) and are keyed to the development plan.

C. FINANCIAL PROPOSAL

As part of its submittal, TICD must include a financial proposal that sets forth principal business terms, which will serve as the basis for negotiating a term sheet and subsequent final transaction documents. The submittal must include the following:

Feasibility Plan and ProForma(s)

The submittal must include a complete ProForma of the anticipated revenues and expenses of the proposed project, including



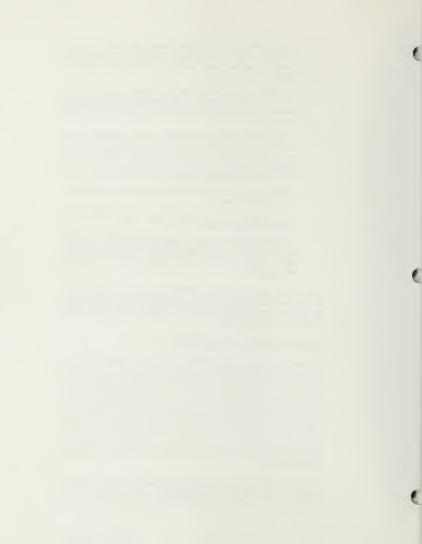
- A clear description of financial assumptions and annual and cumulative cash flow projections for the full build-out period (by phase and product type), including pre-development phases and interim uses;
- A range of expected lease rates for commercial product type, a range of expected rental rates and sales prices (if applicable) for housing, and preliminary market research to support the ProForma assumptions;
- A preliminary budget of development costs, specifying, among other items: pre-development costs; applicable development fees and exactions under the City's Planning Code and other ordinances; estimated seismic and infrastructure costs; and any TICD overhead, fees and contingencies;
- Project returns and the TICD's return requirements, hurdle rates or threshold rates of return.
- A financing plan for capital costs from inception to buildout (see Section II.C.3 below); and
- A preliminary plan to finance maintenance and repair of public infrastructure, open space and community and cultural facilities and the provision of new public services required as a result of development

The Authority recognizes that the ProForma will reflect projections only, based on then current information. The Authority further recognizes that the projections as to early phases of the project will be more reliable than projections as to later phases.

2. Transaction Structure and Business Offer

The Authority expects to receive title to Treasure Island from the Navy as parcels are successfully remediated. The Authority expects the Navy will convey the Hotel Parcel, the South-Waterfront Parcel, the Treasure Island Core Parcel, the Marina Parcel and the Yerba Buena Island Parcel (as shown on the Attachment B), following certification of the EIS/EIR and the issuance of a Record of Decision (ROD) by the Navy. The remaining parcels will be conveyed as soon as the Navy completes all required environmental remediation. In addition, as described in Section II.D (below), the Authority expects to enter into a Lease in Furtherance of Conveyance (LIFOC) for the those portions of the Base not initially transferred in fee

As noted earlier, Treasure Island proper (and small portions of YBI) are subject the Tidelands Trust which prohibits the conveyance of trust property to private owners. However, such property can be leased for trust



uses at fair market value under a long-term ground lease, and properties unencumbered by the Trust can be transferred in fee. Based on the land use program set forth in the proposal (including any proposed Trust Exchange), TICD should indicate which land it expects will be conveyed in fee and which land would be conveyed by lease.

For leased property, TICD should propose a rental structure including base and percentage rent. For property to be conveyed in fee, TICD should describe whether land value would be paid as an up-front purchase price, a back-end participation or some combination of both. TICD should also project City's share of project revenues under both lease and fee transaction structures.

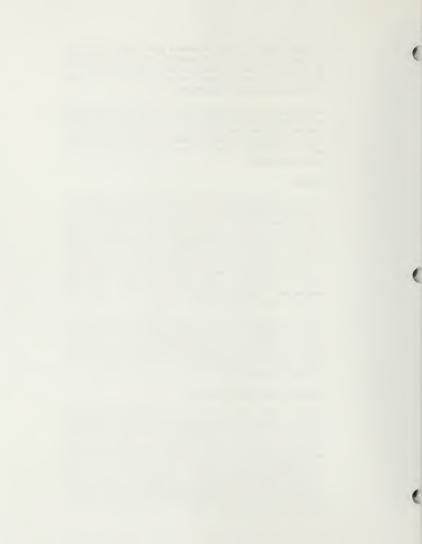
Financing

It is the expectation of the City and the Authority that the proposed project be financially self-sufficient. To improve the project's feasibility, the Authority may (i) allow leasehold financing of its property on commercially reasonable terms, (ii) allow project revenues, including revenues from housing and other interim leases, to be reinvested in the project, and (iii) to the extent of demonstrated need, assist with public financing, such as tax increment bonds and revenue bonds (secured by revenue from the housing and other appropriate sources). However, the City does not intend to spend General Fund dollars for property management, infrastructure improvements, or other capital needs associated with redeveloping the Base.

TICD's submittal must describe its plans for obtaining the equity capital and debt financing necessary to undertake the development, including rates of return these sources are likely to require. Subject to the objectives described in the preceding paragraph, TICD should specify any proposed types of public financing and the purposes for which the proceeds of any such public financing will be used.

4. Guaranty or Other Financial Assurances

TICD has created a special purpose limited liability company for the purpose of submitting its qualifications under the RFQ and ultimately for the purposes of acquiring, managing and redeveloping Treasure Island. However, it is not clear whether the members of TICD are jointly and severably liable for the obligations of TICD. Thus, TICD must describe how it intends to provide an adequate means to assure the Authority of sufficient financial wherewithal and commitment to fulfill the financial, indemnification and other performance obligations of the team, even if one or more constituent members withdraws from TICD. Subject to agreement of the parties, such means may include, by way of example



only and without limitation, guaranties from suitable entities, performance deposits, and/or surety bonds that are appropriate for the guaranteed obligations.

D. MANAGEMENT OF INTERIM USES

As part of the Transaction Documents, the Authority intends to sublease to TICD all of the unconveyed Parcels of the Base that are subject to the LIFOC until those Parcels are conveyed by the Navy. The Authority expects to transfer to TICD all of the protection, maintenance and other responsibilities required by the Navy under the LIFOC. The submittal must describe the expected interim uses and how TICD proposes to manage those interim uses on the leased premises in relation to the redevelopment of the conveyed Parcels.

E. COMMUNITY BENEFITS PROGRAM

The submittal must include a narrative description of a proposed Community Benefit Program, including a description of the program as it relates to the following:

- Permanent and construction jobs, including a description of job training, education and hiring programs consistent with the goals and objectives set forth above and with applicable Authority and City requirements (including First Source Hiring, the TIHDI Job Broker Program, and Equal Opportunity Programs), and of projected numbers and types of jobs by phase and at the full build-out of the project
- Economic development opportunities offered to TIHDI
- Public open space and recreation facilities
- · Community and cultural facilities

F. COMMUNITY OUTREACH PROGRAM

The submittal must include a description of a proposed Community Outreach Program, including a description of the proposed approach to achieving community consensus for the development concept, outreach to the Citizens Advisory Board and other community-based organizations and the relationship of the Regulatory Approvals and Transaction Documents to each step in the community consensus-building process.



G. DEVELOPMENT TEAM

TICD shall augment earlier information that was provided in response to the RFQ by furnishing a description of (i) any new or changed members of the development team, including all key individuals at every level, (ii) the organizational structure of TICD and the decision making process among team members and within the LLC, (iii) the development responsibilities of each primary entity, (iv) all consultants under contract for pre-development and development activities, and (v) a list of contacts, addresses and phone numbers for all members of the development team.



III. EVALUATION CRITERIA:

The Authority shall determine, in its sole and absolute discretion, whether TICD's proposal sufficiently furthers the goals and objectives of the Reuse Plan to justify proceeding to exclusive negotiations with TICD at this time. In making that determination, the Authority may consider, among other things, the following:

A. Project Feasibility and Timing

These criteria consider the feasibility of TICD's proposed Development Concept and the likely time frames for completion of the Project. Assessment of these criteria will include the following:

- <u>Financial and Market Feasibility.</u> Factors include, (i) financial capacity and adequacy
 of working capital of the respondent to cover initial capital expenditures and
 operating costs through development, (ii) diversity of revenue generating uses, (iii)
 reasonableness of market assumptions underlying the Pro-Forma, (iv) reasonableness
 of TICD's expected returns, (v) feasibility of proposed public financing mechanisms,
 (vi) reasonableness of TICD's cost estimates, (vii) appropriateness of the proposed
 transaction structure, and (viii) adequacy of proposed financial assurances.
- Regulatory Feasibility. Factors include consistency of the respondent's Development
 Concept with (i) Tidelands Trust considerations and/or reasonableness of any
 proposed Tidelands Trust exchanges, (ii) applicable BCDC Bay Plan designations,
 (iii) federal base closure requirements of an Economic Development Conveyance,
 including job generation and inclusion of new housing only to the extent necessary to
 achieve "financial feasibility", and (iv) the pending environmental review of the
 Reuse Plan under NEPA and CEOA.
- Market Feasibility. Factors include (i) diversity of revenue generating uses, (ii) flexibility of Development Concept to respond to changes in market conditions, and (iii).
- <u>Technical Feasibility</u>. Factors include the extent to which TICD's Development
 Concept addresses the issues related to (i) new infrastructure and utility systems,
 including electric, gas, telecommunications, potable water, storm-water, and
 wastewater treatment systems, (ii) seismic improvements to the causeway and
 perimeter dike needed to reduce life-safety risks, (iii) redesign and construction of
 arterial roadways and streetscapes, and (iv) environmental remediation of the Base by
 the Navy.
- <u>Phasing/Timing</u>. Factors include (i) the timeline for implementation of the
 Development Concept, including how quickly the respondent's Development
 Concept will cause seismic strengthening of key areas of the Base, including the
 causeway and perimeter dikes, (ii) ability to implement the Development Concept
 with minimal interruption to existing uses and occupants, including residents, (iii)
 overall viability of and schedule for implementing respondent's Development



Concept, including the use of incremental or phased development to maximize land value.

B. Land Use Plan/Urban Design

These criteria consider whether TICD's Development Concept meets the land use objectives set forth in the Reuse Plan. Assessment of these criteria include the extent to which TICD's Development Concept achieves the following:

- Creates a broad mix of mutually supportive, publicly oriented uses, with an emphasis
 on recreation, cultural, educational and entertainment uses that appeal to local and
 regional residents and tourists.
- Provides for land uses that are compatible with each other and existing uses throughout all phases of development.
- Preserves structures and places of historic significance and architectural interest.
- Provides a variety of housing opportunities with emphasis on maximizing the number of affordable housing units available to all income ranges and satisfies the housing provisions set forth in the TIHDI agreement.
- Improves public access to the bay, including increased waterfront recreational
 opportunities and uses that enliven and improve access to the water's edge.
- Improves the appearance and identity of the Island by heightening its visibility, prominence and sense of immediacy with the rest of the City, and orienting development to take advantage of the island setting, outstanding views, and close proximity to downtown San Francisco.
- Maximizes public amenities such as parks and open space for passive and active recreational use and creates a continuous open corridor along the shoreline edge.
- Protects hillside and shoreline open space on Yerba Buena Island and focuses open space on the water and other natural features to provide a sense of nature and visual contrast with developed portions of the Island.
- Protects important biological resources and maintains and improve the quality of the surrounding natural environment, including, to the extent feasible, the creation of wetlands to treat storm run-off.
- Minimizes potential environmental impacts related to development through the use of "green building" practices. Utilizes best practices for sustainable development and resource management throughout the life of the Project. Addresses environmental factors such as wind and noise in the site, building, and street design. Promotes energy conservation and efficiency.
- Minimizes increases in automobile traffic on the Island and provides for alternative transit modes as the primary means of access, including creating viable and attractive ferry and/or other water transit services.

. .



- Create a safe, attractive, pedestrian friendly multi-modal system of streets, walkways and bike paths. Developer innovative modes of intra-island transportation.
- Provides facilities for essential public services such as fire and police protection, an elementary school, and public works/utility operations.

C. Economic Development/Financial Impacts on City.

These criteria weigh the overall fiscal impacts of the Development Concept on the City and the Authority. Assessment will include the following:

- The net fiscal impact of TICD's proposal on the City, including (i) projected new lease, land sale and tax revenues to the Authority or the City and (ii) the extent to which development requires public funding.
- The extent to which respondent's Development Concept will enable the Authority to realize the job generation goals outlined in the EDC application to the Navy and contribute to the economic vitality of the City and the region.
- Proposed terms of Base Rent and City's Participation in surplus revenue, including the percentages, triggering events and threshold (hurdle rate) for any such Authority participation.
- The likelihood that the Authority will receive an appropriate return for over the life of the Project from leases, revenue participation, land sales, and other redevelopment activities.
- The extent to which TICD minimizes the Authority's interim asset management costs by accepting such operating responsibilities and costs.
- The extent to which TICD minimizes the Authority's legal and financial liabilities associated with environmental remediation.
- The extent to which TICD's Community Benefit Program demonstrates a
 commitment to create or retain jobs for San Francisco residents, especially
 economically disadvantaged persons, and to provide minority and women-owned
 business enterprises with an equal opportunity to compete for and participate in
 project development and operations
- The extent to which respondent's Community Benefit Program demonstrates TICD's commitment to work cooperatively with the TIHDI Job Broker Program and the scope and quality of economic development opportunities for TIHDI member organizations.



IV. TIMELINE AND EVALUATION PROCESS

A. <u>Schedule</u>. The Authority intends to proceed with its evaluation of TICD's proposal as follows:

1)	Pre-Submittal Conference/Q&A	March, 2001
2)	Initial Responses to RFPs due	May, 2001
3)	Proposal Presentations at Authority/CAB Workshops	June, 2001
4)	Final Revised Proposal Due	July, 2001
5)	Evaluation of Proposal by CAB and Authority	July, 2001
6)	If Proposal is Approved by Authority, Enter into ENA	August, 2001

- B. <u>Submittal</u>. TICD must deliver one readily reproducible complete set of its initial response and at least 35 copies to the Authority no later than 5 p.m. on
- C. Evaluation of Initial Proposal by Authority and CAB. The Authority intends to hold a special workshop at which TICD will be given the opportunity to make a brief presentation regarding its initial proposal, and then answer questions from members of the Authority and/or representatives of the Review Committee. It also expected that TICD would be asked to make a separate presentation of their proposal to the Treasure Island/Yerba Buena Island Citizen's Advisory Board ("CAB"). Subsequent to those presentations, TICD will be given an opportunity to revise its proposal to further address issues and concerns raised at those meetings.
- D. Evaluation of Final Proposal. A review committee established by the Authority's Executive Director will review TICD's final proposal and make a recommendation to the Authority Board as to whether TICD's final proposal meets the evaluation criteria described in Section III of this RFP. In arriving at its recommendation, the Review Committee will evaluate the contents of TICD's proposal and may conduct follow-up interviews. The Review Committee may also consider in its evaluation TICD's presentations to the Authority and the CAB.
- E. <u>Recommendation to Authority</u>. The recommendations of the Review Committee will be presented to the Authority for its consideration at a public hearing. The Authority Board will make the final decision as to whether to proceed with TICD or take such other action as the Authority may decide in its sole and absolute discretion.
- F. Exclusive Negotiating Agreement. If the Authority, based on TICD's final proposal, elects to proceed with TICD as a potential Master Developer for Treasure Island, the Authority will enter into an Exclusive Negotiations Agreement ("ENA") with the TICD, pursuant to which TICD will have the exclusive right to develop the Project for the term of the ENA. Under the ENA, TICD will be required to bear all costs of environmental review and any other regulatory approvals required for the Authority to



enter into the Transaction Documents, including, without limitation, any building permit, planning application or impact fees assessed by the City or any other governmental agency with jurisdiction. Other agencies which may have regulatory jurisdiction over the Project include the City's Planning Department (which among other duties is responsible for environmental review, makes General Plan consistency findings, and determines compliance with San Francisco Planning Code provisions implementing the Coastal Zone Management Act) and Arts Commission, the State Lands Commission, the Bay Conservation Development Corporation (BCDC), the California Coastal Authority, the Army Corps of Engineers and the State Department of Fish and Game. The Authority will cooperate with the successful respondent's efforts in obtaining such regulatory approvals. The ENA will also require TICD to reimburse the Authority for all of its transaction costs related to the preparation and negotiation of the Transaction Documents, including the Authority's consultant and legal costs. Based on projects of comparable size and complexity, TICD should expect those costs to equal approximately \$1.5 to \$2.5 million per year until final approval of the transaction documents.

G. Negotiate Transaction Documents and Obtain Project Approvals. Pursuant to a specific schedule of performance set forth in the ENA, the Authority and the Developer will negotiate and prepare any deeds, leases, development agreements and other documents related to the development of the Project (together, the "Transaction Documents"). After the completion of all required environmental review under California Environmental Quality Act ("CEQA") and any regulatory approvals required as a condition of such approvals, the Transaction Documents will be presented to the Authority, the City's Board of Supervisors and the Mayor, for approval in their respective sole and absolute discretion. Prior to such approvals, the Authority will retain the sole and absolute discretion to (i) make modifications to the Transaction Documents or the Project necessary to mitigate significant environmental impacts, or (ii) elect not to proceed with the Transaction Documents or the Project.



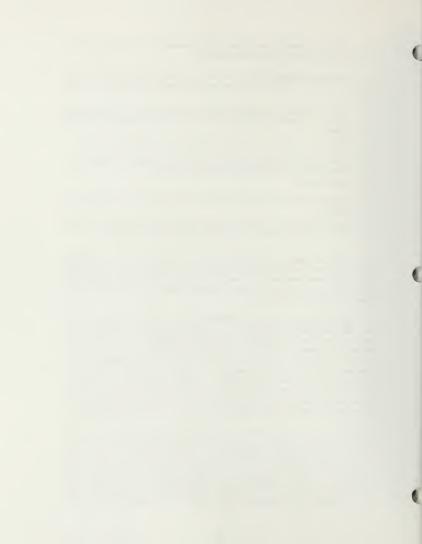
V. TERMS AND CONDITIONS.

- Proposal Execution. TICD's proposal must be signed in ink, with TICD's address. Evidence of the legal status of TICD, whether individual, partnership, corporation. Limited Liability Company, county or municipality shall also be provided. Corporation shall execute the proposal by its duly authorized officers in accordance with its corporate bylaws and shall list the State in which it is incorporated. A partnership shall give full names and addresses of all partners and shall list the State in which it is organized and shall execute the proposal by its duly authorized partners in accordance with the partnership agreement. A limited liability company shall give full names and addresses of all members and shall list the State in which it is organized and shall execute the proposal by its duly authorized members or managers in accordance with its operating agreement. Partnerships, limited liability companies, and individuals shall be required to state the names of all persons involved in the proposal. The place of residence of each partner, member, or individual, or the office address in case of a firm or company, including state, zip code and telephone number, shall be given after each name. If TICD is formed as a joint venture consisting of a combination of any of the above entities, each joint venturer shall execute the proposal. Anyone signing a proposal as an agent of a firm or entity shall submit legal evidence of his or her authority to do so with the proposal.
- B. <u>Proposal Security Deposit</u>. In addition to the One Hundred Thousand Dollar (\$100,0000) deposit submitted with the RFQ, TICD must submit with its final proposal an additional proposal security deposit in the form of a forfeiture-type bond, a check certified by a responsible bank, or a cashier's check payable to the City and County of San Francisco in the amount of One Hundred Thousand Dollars (\$100,000). If the Authority does not elect to proceed to exclusive negotiations with TICD, its deposits will be returned without interest. If the Authority elects to proceed with exclusive negotiations with TICD, upon execution of the ENA (as described below) TICD will be required to increase its deposit by an additional One Hundred and Forty Thousand Dollars (\$150,000), to a total of Three Hundred and Fifty Thousand Dollars (\$350,000), at which time the deposit would serve as the first advance to the Authority for its transaction costs under the ENA.
- C. Grounds for Rejection. Any false, incomplete, or unresponsive statements in connection with TICD's proposal may be cause for its rejection at the City's discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the Authority and its judgment shall be final.
- D. Invitation to Submit Proposals, No Obligations by City to Contract. This RFP is only an invitation to submit a proposal, and does not commit the Authority or the City in any way to enter into the Transaction Documents or to proceed with the RFP or the proposed Project. In addition, the issuance of this RFP does not obligate the Authority or the City to pay any costs incurred by TICD in connection with (i) the preparation of a response to this RFP, (ii) any supplements or modifications of this RFP or (iii) negotiations with the Authority or the City or other party arising out of or relating to this



- RFP. All costs incurred in the preparation and presentation of TICD's proposal in response to this RFP shall be borne solely by TICD.
- E. Reservation of Rights by City. The Authority expressly reserves the right at any time and from time to time, and for its own convenience, to do any or all of the following:
 - Waive or correct any immaterial defect or technical error in any response, proposal, or proposal procedure, as part of the RFP or any subsequent negotiation process.
 - 2. Reject any and all proposals, without indicating any reason for such rejection.
 - Request that certain or all respondents to this RFP supplement or modify all or certain aspects of the information or proposals submitted.
 - 4. Reissue an RFP.
 - Modify the selection procedure, the scope of the proposed Project or the required responses.
 - 6. Extend deadlines for accepting responses, requesting amendments to responses after expiration of deadlines, or negotiating or approving final agreements.
- F. <u>TICD Certification</u>. By submitting a proposal, TICD certifies to the Authority that it has not paid nor agreed to pay and will not pay or agree to pay any fee, or any other thing of value contingent on the award of a contract for the project to any City or Authority employee or official, or to any contracting consultant hired by the City or the Authority for purposes of this project.
- G. Proposal as a Public Record. Generally, all documentation including financial information submitted by TICD to the City or the Authority are public records under State and local law, including the City's Sunshine Ordinance. TICD will clearly designate those financial records that it in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the Authority will attempt to reasonably maintain the confidentiality of such financial information, consistent with the Authority's general practices for maintaining the confidentiality of such information. However, the Authority will not under any circumstances be responsible for any damages or losses incurred by TICD or any other person or entity because of the release of such financial information.

THEREFORE, IT IS IMPORTANT FOR TICD TO CLEARLY IDENTIFY IN ITS PROPOSAL THOSE FINANCIAL RECORDS OR OTHER INFORMATION THAT TICD IN GOOD FAITH DETERMINES TO BE A TRADE SECRET OR CONFIDENTIAL PROPRIETY INFORMATION PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. TO THE EXTENT PERMITTED BY LAW, THE AUTHORITY WILL ATTEMPT TO REASONABLY MAINTAIN THE CONFIDENTIALITY OF SUCH FINANCIAL INFORMATION, CONSISTENT WITH AUTHORITY'S GENERAL PRACTICES FOR MAINTAINING THE



CONFIDENTIALITY OF SUCH INFORMATION, AND INFORMATION SO MARKED WILL BE REDACTED FROM THE COPIES PRESENTED TO THE PUBLIC. HOWEVER, GENERALLY, ALL DOCUMENTATION INCLUDING FINANCIAL INFORMATION SUBMITTED BY TICD TO THE CITY OR THE AUTHORITY ARE PUBLIC RECORDS UNDER STATE AND LOCAL LAW, INCLUDING THE CITY'S SUNSHINE ORDINANCE AND NEITHER THE CITY NOR THE AUTHORITY WILL BE RESPONSIBLE FOR ANY DAMAGES OR LOSSES INCURRED BY TICD OR ANY OTHER PERSON OR ENTITY BECAUSE OF THE RELEASE OF SUCH FINANCIAL INFORMATION.

- H. Return of Materials. The Authority will not return TICD's proposal or any information submitted in connection with it unless TICD has properly designated financial portions of the proposal as confidential at the time of proposal in accordance with the terms above and has then clearly requested that such information be returned, and provided that the Authority is legally permitted to return such documents.
- L. <u>Right to Disqualify</u>. The Authority reserves the right to disqualify TICD on the basis of any real or apparent conflict of interest that is disclosed by the responses submitted or other data available to the Authority. This disqualification is at the sole discretion of the Authority.
- M. Waiver of Claims Against the City and the Authority. TICD shall not obtain by its response to this RFP any claim against the City or the Authority by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities of defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into any such lease, any statement, representations, acts or omissions of the Authority or the City or its agents, the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of all or any of the foregoing.

Without limiting the generality of the foregoing, the information presented in or in connection with the RFQ and this RFP, including the EDC Application and the information in the Developer's Packet is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that any information contained in or related to the RFQ or this RFP is accurate and complete. No representations, assurances, or warranties pertaining to the accuracy of such information are or will be provided by the Authority or the City or its consultants and no claim may be brought against the City or the Authority, or any of their respective consultants as a result of the presentation of such information, irrespective of its accuracy.



EXHIBIT A - SUMMARY OF GOALS AND OBJECTIVES

The Draft Reuse Plan for former Naval Station Treasure Island ("Treasure Island"), endorsed by the City's Planning Commission and Board of Supervisors in July of 1996, sets forth broad land use planning objectives and polices for the redevelopment of Treasure Island, which are summarized below.

I. Land Uses

- Provide a broad mix of mutually supportive, publicly oriented attractions at Treasure Island, emphasizing marine-related, recreational, entertainment, and hospitality uses.
- Emphasize uses that take advantage of Treasure Island's unique position in the center
 of the San Francisco Bay and its outstanding views. Heighten the visibility and sense
 of immediacy between Treasure Island and the rest of the City.
- Pursue uses that will enliven the water's edge and improve public access to the Bay.
 Ensure continuos public access to the shoreline edge.
- Create areas for active and passive recreational uses such as ball fields and other recreational activities, open space, trails, and other park-like amenities, as well as water-oriented recreational activities.
- Preserve public open spaces that focuses on Treasure Island's natural features and island setting and which provide a sense of nature and visual contrast to developed portions of Treasure Island
- Maintain and improve the quality of Treasure Island's natural environment, including, to the extent feasible, the development of wet lands.
- Encourage the preservation of buildings with historic and/or architectural significance.
- Permit institutional uses that are compatible with the Redevelopment Plan and which serve a broad range of public purposes. Focus institutional uses on the reuse of existing specialized facilities.

II. Economic Development

- Promote activities that will create new jobs and contribute to the economic vitality of the City and the region.
- Purse development that will generate sufficient revenues to pay for necessary improvements to Treasure Island.
- Allow for flexibility in acceptable land uses to adapt to changing market conditions and changes in technology.



- Ensure the broad participation of minority, women-owned, local and disadvantaged businesses in all facets of the implementation of the Redevelopment Plan.
- Foster economic development opportunities for homeless service providers that will give them a stake in the successful redevelopment of Treasure Island.
- Encourage interaction among economic activities to promote economic selfsufficiency.

III. Transportation.

- Attempt to minimize increases in automobile traffic on the San Francisco-Oakland Bay Bridge, particularly during peak weekday and weekend periods.
- Encourage uses that can be supported by mass and/or public transit, particularly water-borne transportation.
- Establish coordinated local and regional transit plans for providing access to Treasure Island, and coordinate new development with existing, new and anticipated transportation systems.
- Establish water transportation connections to the rest of the region. Promote a
 regional system of ferry landings that are accessible by diverse travel modes.
- Encourage the use of water taxis to support regularly scheduled ferries.
- Develop safe, attractive, pedestrian friendly multi-modal system of streets, walk ways
 and bike paths that can accommodate bicycle and pedestrian traffic along with
 shuttles, transit buses and automobiles. Consider innovative, non-traditional, means
 of circulating people throughout Treasure Island.

IV. Interim Uses

- Permit interim uses that maintain flexibility, and facilitate and are compatible with long-term reuse.
- Focus interim reuse on existing structures that can feasibly be operated in compliance with applicable laws and in a manner and for a term consistent with the long-term redevelopment of Treasure Island.
- Minimize life-safety hazards from existing buildings by requiring structures to meet the FEMA-178 life-safety standard whenever feasible.

V. Infrastructure and other Base-Wide Improvements.

Cause new development to address seismic hazards.



- Phase-in seismic reinforcements to the perimeter of Base and the causeway and longterm utility and other infrastructure improvements in conjunction with long-term development.
- Utilize existing infrastructure to the extent feasible to foster economic development.
- Ensure that hazardous substances are adequately characterized and remediated.
- Maximize utilization of federal funds to complete remediation consistent with the Redevelopment Plan.
- Coordinate the phasing of clean-up with areas of anticipated interim reuse and longterm redevelopment.
- Cause new development to comply with applicable laws, including disability access laws.
- Develop Base-wide accessibility programs and improvements.
- Promote innovations in sustainable development and resource management.
- Incorporate environmentally sensitive building and street designs and undertake improvements that will promote energy conservation and efficiency.
- · Pursue using wet lands to treat storm-water run-off.
- Minimize noise and adverse visual impacts from the Bay Bridge, institutional users and other uses on Treasure Island.

IV. Community and Social Services; Public Safety.

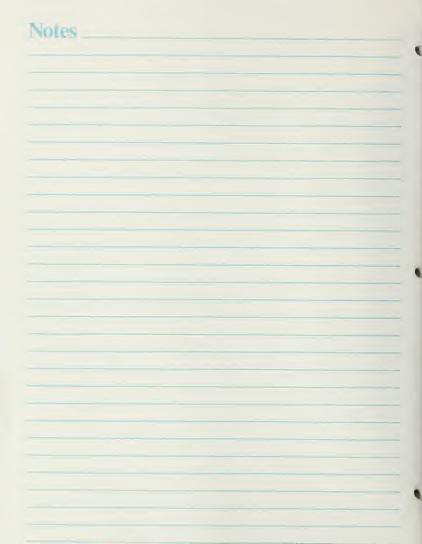
- To the extent consistent with long-term redevelopment and permitted by applicable laws, support the use of existing housing by a broad range of persons, reflecting the socioeconomic and cultural diversity of the San Francisco Bay Area.
- Provide community facilities and essential public services for Treasure Island's residents, visitors and businesses.
- Address homeless needs identified in San Francisco's Continuum of Care as part of a balanced overall plan in accord with federal base closure regulations.
- Include services for the homeless through a combination of programs, including transitional housing, job training and economic development opportunities.
- Grant job-ready homeless and economically disadvantaged persons access to employment opportunities. Individualize job-training programs to the specific needs of employers.



- Ensure the provisions of adequate public safety services such as police, fire, and emergency medical services for Treasure Island.
- Prepare and refine emergency response plans for Treasure Island.
- Encourage collaborations between institutional users and service providers to reduce costs for facilities and services.







DRAFT Minutes of Meeting Treasure Island Development Authority February 13, 2002

1. Call to order 1:12 P.M.

DOCUMENTS DEPT.

Roll Call Present:

Claudine Cheng William Fazande Marcia Rosen

Marcia Rosen
Doug Wong
Susan Po-Rufino
John Elberling

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Excused:

Gerald Green

*Ms. Cheng states she received a number of communications from the public regarding concern about public input and environment issues with the draft Request for Proposal ("RFP") process. Ms. Cheng suggested there be a joint meeting on March 21, 2002 with the Authority and the CAB regarding the RFP.

- 2. The minutes of December 12, 2001 were approved unanimously.
- 3. No Communications
- *Ms. Cheng acknowledges John Elberling for his leadership for the last few years on the Authority Board.
- 4. Executive Director's Report given by Annemarie Conroy:
- Public Access Weddings, private parties and senior bus tours continue on Treasure Island.
 Golden Gate women's soccer and rugby have started their season again on Treasure Island.
 Stanford University will be hosting alumni education event in Building 3. Ms. Conroy continues to list several upcoming events on Treasure Island.
- Environmental Cleanup: The Navy has completed their project along the southern waterfront to
 remove old fuel lines. The Navy is still revising the engineering evaluation, and cost analyzes
 document. We expect a draft document by the end of April for the remaining housing units. The
 Navy will also begin addressing a petroleum site, which is near the fogwatch restaurant. There is
 remedial action their going to need to take at Fogwatch that will require a particle demolition of
 the building. Staff will work with the Navy on plans to restore the facility for interim reuse.
- Short Term leases: There are no new short-term leases.
- Bay Bridge Issues: The Governor held a press conference on Treasure Island to officially begin construction on the new eastern span of the Bay Bridge.
- Community Issues: Job Corps has chosen an operator for their convenient store.
- Citizen's Advisory Board: At the CAB meeting in January 2002, Stephen Proud distributed a
 brief overview of the RFP. The CAB will forward their recommended changes to be adopted by
 March 2002. The next CAB meeting is Thursday February 21, 2002 on Treasure Island at the Job
 Corp facility where they will hold an election of officers of the CAB.
- TIHDI: The Authority and TIHDI are finalizing a month-to-month sublease for the Ship Shape Facility to be used as support service space.
- Financial Report: Current budget revenues received from July 2001 through January 2002 total about 4 million dollars or 63% of total projected revenues for the 2001-2002 fiscal year. Ms. Conroy continues to discuss the TIDA budget for Fiscal Year 2001-2002 in detail. Next month

- staff will submit the budget to the Authority for the Fiscal year 2002-2003. Currently, the budget is in good condition with revenues from the John Stewart Company for the housing units.
- Legislation/hearings affecting Treasure Island. Staff continues to work with the Finance
 Committee of the Board of Supervisors. Currently, Supervisor Arron Peskin is the chair,
 Supervisor Sophie Maxell and Supervisor Chris Daly are members of the finance committee.
 Treasure Island is within Supervisor Daly's District.

5. General Public Comment

Carrie Wonzer of TIHDI informed the Authority that they were organizing with Treasure Island residents to advocate for inclusion in the Recreation and Parks Department's 2002-2003 budget.

- Ongoing Business by Directors and Introduction of New Business by members
 The Authority agreed to support staff in seeking funding from the Recreation and Park Department for
 Treasure Island.
- 7. Resolution authorizing the Authority to extend a month-to-month Sublease with the Department of Aging and Adult Services for Room 21 located in Building One for an additional twelve months. London Breed, Development Specialist, replied that on August 9, 2001, the Executive Director entered into a sublease with the Department of Aging and Adult Services to occupy Room 21 in Building One for storage space at a rental rate of \$500.00 per month. The Department uses the space to store personal property of conservetees and estates, generally consisting of files, paper goods, books and personal mementos. The Sublease expired on January 31, 2002 and approval of the resolution will extend the term for twelve months, expiring January 31, 2003.

Elberling moved approval. Po-Rufino seconded. Approved 6-0

8. Resolution authorizing the Authority to extend a month-to-month Sublease with the District Attorney's Office for Room 307 located in Building One for an additional twelve months. On July 17, 2000, the Executive Director entered into a Sublease with the District Attorney's Office to occupy Room 307 in Building One to use as office space at a rental rate of \$2,700 per month. In January 2001, the Authority approved an amendment to extend the term for an additional twelve months and increase the monthly rental rate to \$3,000 per month. The term expired on January 31, 2002 and approval of this resolution will extend the term for an additional Twelve months, expiring January 31, 2003.

Fazande moves approval. Elberling seconded. Approved 6-0

9. Resolution authorizing the Authority to extend a month-to-month Sublease with W Wong Construction for Building 62 for an additional twelve months.

On July 1, 1999, the Executive Director entered into a sublease with W. Wong Construction for the use of a portion of Building 62 for storage of office related equipment, files and records. On February 9, 2000, September 13, 2000 and March 29,2001 the Authority approved an extension to the sublease in each case and the term will expire on February 28, 2002. W. Wong Construction currently pays the Authority \$2,000 per month for the use of the facility. Staff recommends approval.

Ms. Rosen asked why the rental rates for the tenants were not increased. Ms. Breed replied that a rental increase was not proposed because of the substandard conditions of the facilities and the decrease in commercial rents throughout San Francisco based on the current economy.

Elberling moved approval. Fazande Seconded. Approved 6-0.

10. Resolution authorizing the Authority to extend a month-to-month Sublease with Island Creative Management for Building 99 for an additional twelve months.

On September 1, 1999, the Executive Director entered into a sublease with Island Creative Management for the use of a portion of building #99 for building sets in television, film production and special events. On March 29, 2001, the Authority approved an amendment to the sublease to increase the premises and monthly rental rate from \$6,000 to \$10,500 per month. On September 13, 2000 & March 29,2001, the Authority approved an extension to the sublease in each case and the sublease expires on February 28,2002.

Rosen moved approval. Fazande seconded. Approved 6-0

11. Presentation of Focused Request for Proposal for Primary Developer to be issued to Treasure Island Community Development.

Stephen Proud, Director of Development, discusses the Economic Development Conveyance ("EDC") and the environmental process with the US Navy. Mr. Proud discusses the Request for Qualifications ("RFQ") Process and how it has led up to the current RFP process. Currently, staff has prepared the draft RFP that will be reviewed by various committees, agencies, and the public and issued in the spring. The Authority should expect to receive the response for the RFP in summer 2002. If the Authority finds the terms acceptable to select the primary developer for Treasure Island, staff will then execute an exclusive negotiating agreement. Mr. Proud acknowledges that an Independent Economic Plan System was arranged to assist staff with the RFP preparations.

Mr. Proud discusses Section 2 of the draft RFP referring to the draft reuse plan as the framework of the draft RFP. Michael Cohen, Deputy City Attorney, states that the current federal administration has announced that for the 2005 BRAC closures there will be no new no-cost EDC's. This will not apply retroactively if you have already submitted an EDC application, which the Authority has already submitted. The Authority is preparing an Environmental Impact Report ("EIR") based on the Navy's draft Environmental Impact Statement ("EIS"). Although the EDC will support a maximum of 2,800 housing units, the Authority may have issues with a land trust swap to build new housing on Treasure Island.

John Elberling expressed concern about EDC/EIS process. Mr. Elberling suggested that a developer submit a proposal based on a no land trust swap. Mr. Elberling asked if the Authority could have plan "A" that would consist of the Tidelands Trust restrictions and plan "B" that would not include the restrictions of the trust. Mr. Cohen replied that it would be sufficient to allow a developer to submit a proposal that exceeds the EIR Prior to the Authority's final decision regarding the RFP. Currently, staff is in discussions, with the State Lands Commission, regarding the "equal value" test that needs to be met. It has taken the U.S. Navy more than five years to produce an EIS.

Ms. Conroy expressed her concern to the US Navy regarding changes in the EIS process, which can have a major impact on moving forward with development on Treasure Island. The Authority may be able, in other ways, to provide more housing.

Mr. Cohen replies that the expectation has been that the programmatic environmental review, which supports transfer, are also able to support a programmatic redevelopment plan that has been released or is scheduled to be released.

Ms. Cheng asks if Mr. Cohen could clarify information regarding discussions with the State Land Commission as to the perimeters or the swap. Mr. Cohen replies that you obtain an appraisal and both TI and YBI properties are appraised. Although there are some complicated mapping issues, we would probably explore with them whether a unitary value of an acre for acre is possible.

Mr. Proud replied that the Authority's EDC application indicated the reuse of 1,000 housing units, however the EIS would support 2,800 housing units. The Navy expressed concern over 1,800 housing spread between the two documents. The EDC business plan only generated a 12% spread, which means that it is an extremely risky project and we would need to ramp up the housing project Mr. Elberling suggested that a performance standard be required for the traffic impacts on the Bay Bridge. In order to produce the least amount of traffic on the Bay Bridge, maximize the amount of people that work and live on the island.

Public Comment on Item 11

Jay Wallace, Treasure Island Community Development, replied that his development group is fully aware of the limitations addressed by the commission and are prepared to meet to address them. TI Community Development is working hard to program uses that take in to account 2,800 hundred housing units, THIDI Agreement, and the existing uses:

Eve Bauch, Arc Ecology, commented on changes in the reuse plan, more public input and concerns about affordable housing.

Public Comment Ends

Ms. Rosen replies that she would urge that the Authority to require in the RFP, the specific depth of affordability and the duration of affordability for housing. Ms. Cheng replies that she would like the city attorney to clarify legally the status of the Treasure Island in regards to the City's goals vs. state law vs. redevelopment law, etc. Mr. Cohen replies that we can try to come up with a way to summarize that to you in writing. The THIDI agreement is in fact higher than what state law would simply require. The short answer is that you have quite a bit of discretion to increase the requirements. Mr. Elberling replies that we should be setting important goals. I would like to suggest a 30% housing affordability.

Mr. Proud replied that the access issue on TI is problematic to the extent that the Jobs on the Island balance with the housing. The EIR, currently in preparation, has a very aggressive transportation mitigation program. Discussions about shared parking agreements and the number of cars allowed on TI have taken place.

Public Comment on Item #11

Terry Shore, Blue Water Network, urged the Authority to adopt language in the RFP to require the use of modern clean ferries.

Sherry Williams, Executive Director of TIHDI, expresses her support for the RFP. Public Comment Ends

Mr. Proud States that most of the infrastructure systems on closing military bases are generally substandard. We have done a fair amount of work in terms of evaluating both as the existing report and the draft reuse plan. We are looking at how the development team might approach deficiencies on TI. The RFQ and the development process should provide the Authority with focus on the issues once we have a draft proposal that provides a document to react to.

The Authority agrees to continue the discussion on Item #11 at the next commission meeting on March 13, 2002.

Meeting adjourned 4:01 PM

FREASURE ISLAND PROJECT 410 AVENUE OF THE PALMS BUILDING 1, 2ND FLOOR TREASURE ISLAND SAN FRANCISCO, CA 94130 (415) 274-0660

FAX (415) 274-0299

TREASURE ISLAND DEVELOPMENT AUTHORITY
MEETING AGENDA
Wednesday, March 13, 2002 1 P.M.

DOCUMENTS DEPT.

13/02

Room 400, City Hall 1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

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Time L. Brown, 31., Mayor

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DIRECTORS

Claudine Cheng, Chair William Fazande, Vice-Chair John Elberling Marcia Rosen Gerald Green Susan Po-Rufino Doug Wong

Annemarie Conroy, Executive Director London Breed, Commission Secretary

ORDER OF BUSINESS

- Call to Order and Roll Call
- Approval of Minutes (Action Item)
- Communications (Discussion Item)
- 4. Remarks by Chair (Discussion Item)
- 5. General Public Comment (Discussion Item)
 - ***In addition to General Public Comment (Item #5), Public Comment will be held during each item on the agenda.***
- 6. Ongoing Business by Directors and Introduction of New Business by members (Discussion Item)
- Resolution to approve an amendment to the TI/YBI Citizen's Advisory Board's bylaws, Article IV.
 Section 5 meeting attendance (Action Item)
- Resolution approving the budget of the Treasure Island Development Authority for Fiscal Year 2002-2003, and authorizing the Executive Director to submit the proposed Budget to the Mayor of the City of San Francisco for further review and inclusion in the City's Fiscal Year 2002-2003 budget (Action Item)
- Presentation of Focused Request for Proposal for Primary Developer to be Issued to Treasure Island Community Development (Discussion Item)
- 10. Discussion of Future Agenda Items (Discussion Item)
- 11. Adjourn

Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.

MEETING AGENDAS NOW AVAILABLE ON E-MAIL

If you would like to receive TIDA meeting agendas by e-mail, rather than through U.S Postal Service mail, please send your name and e-mail address to TIDA@ci.sf.ca.us.

Disability Access

The Treasure Island Development Authority will meet at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

The closest accessible BART is Civic Center, three blocks from the City Hall at the intersection of Market, Grove and Hyde Streets. Accessible MUNI lines serving this location are: #42 Downtown Loop, 9 San Bruno and the #71 Haight/Noriega. Accessible Muni Metro lines are J, K, L, M and N stopping at the Muni Metro Civic Center Station at Market and Van Ness. For more information about MUNI accessible services, call 923-6142. Accessible curbside parking is available on Grove Street.

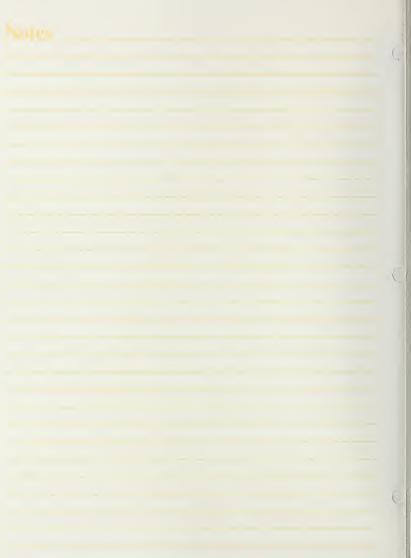
TREASURE ISLAND WEBSITE

Check out the Treasure Island website at www.ci.sf.ca.us/treasureisland to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.









DRAFT Minutes of Meeting Treasure Island Development Authority February 13, 2002

Call to order 1:12 P.M.

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William Fazande Marcia Rosen Doug Wong Susan Po-Rufino John Elberling

Excused: Gerald Green

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Stephen Proud, Director of Development, discusses the Economic Development Conveyance ("EDC") and the environmental process with the US Navy. Mr. Proud discusses the Request for Qualifications ("RFQ") Process and how it has led up to the current RFP process. Currently, staff has prepared the draft RFP that will be reviewed by various committees, agencies, and the public and issued in the spring. The Authority should expect to receive the response for the RFP in summer 2002. If the Authority finds the terms acceptable to select the primary developer for Treasure Island, staff will then execute an exclusive negotiating agreement. Mr. Proud acknowledges that an Independent Economic Plan System was arranged to assist staff with the RFP preparations.

Mr. Proud discusses Section 2 of the draft RFP referring to the draft reuse plan as the framework of the draft RFP. Michael Cohen, Deputy City Attorney, states that the current federal administration has announced that for the 2005 BRAC closures there will be no new no-cost EDC's. This will not apply retroactively if you have already submitted an EDC application, which the Authority has already submitted. The Authority is preparing an Environmental Impact Report ("EIR") based on the Navy's draft Environmental Impact Statement ("EIS"). Although the EDC will support a maximum of 2,800 housing units, the Authority may have issues with a land trust swap to build new housing on Treasure Island.

John Elberling expressed concern about EDC/EIS process. Mr. Elberling suggested that a developer submit a proposal based on a no land trust swap. Mr. Elberling asked if the Authority could have plan "A" that would consist of the Tidelands Trust restrictions and plan "B" that would not include the restrictions of the trust. Mr. Cohen replied that it would be sufficient to allow a developer to submit a proposal that exceeds the EIR Prior to the Authority's final decision regarding the RFP. Currently, staff is in discussions, with the State Lands Commission, regarding the "equal value" test that needs to be met. It has taken the U.S. Navy more than five years to produce an EIS.

Ms. Conroy expressed her concern to the US Navy regarding changes in the EIS process, which can have a major impact on moving forward with development on Treasure Island. The Authority may be able, in other ways, to provide more housing.

Mr. Cohen replies that the expectation has been that the programmatic environmental review, which supports transfer, are also able to support a programmatic redevelopment plan that has been released or is scheduled to be released.

Ms. Cheng asks if Mr. Cohen could clarify information regarding discussions with the State Land Commission as to the perimeters or the swap. Mr. Cohen replies that you obtain an appraisal and both TI and YBI properties are appraised. Although there are some complicated mapping issues, we would probably explore with them whether a unitary value of an acre for acre is possible.



Mr. Proud replied that the Authority's EDC application indicated the reuse of 1,000 housing units, however the EIS would support 2,800 housing units. The Navy expressed concern over 1,800 housing spread between the two documents. The EDC business plan only generated a 12% spread, which means that it is an extremely risky project and we would need to ramp up the housing project Mr. Elberling suggested that a performance standard be required for the traffic impacts on the Bay Bridge. In order to produce the least amount of traffic on the Bay Bridge, maximize the amount of people that work and live on the island.

Public Comment on Item 11

Jay Wallace, Treasure Island Community Development, replied that his development group is fully aware of the limitations addressed by the commission and are prepared to meet to address them. TI Community Development is working hard to program uses that take in to account 2,800 hundred housing units, THIDI Agreement, and the existing uses.

Eve Bauch, Arc Ecology, commented on changes in the reuse plan, more public input and concerns about affordable housing.

Public Comment Ends

Ms. Rosen replies that she would urge that the Authority to require in the RFP, the specific depth of affordability and the duration of affordability for housing. Ms. Cheng replies that she would like the city attorney to clarify legally the status of the Treasure Island in regards to the City's goals vs. state law vs. redevelopment law, etc. Mr. Cohen replies that we can try to come up with a way to summarize that to you in writing. The THIDI agreement is in fact higher than what state law would simply require. The short answer is that you have quite a bit of discretion to increase the requirements. Mr. Elberling replies that we should be setting important goals. I would like to suggest a 30% housing affordability.

Mr. Proud replied that the access issue on TI is problematic to the extent that the Jobs on the Island balance with the housing. The EIR, currently in preparation, has a very aggressive transportation mitigation program. Discussions about shared parking agreements and the number of cars allowed on TI have taken place.

Public Comment on Item #11

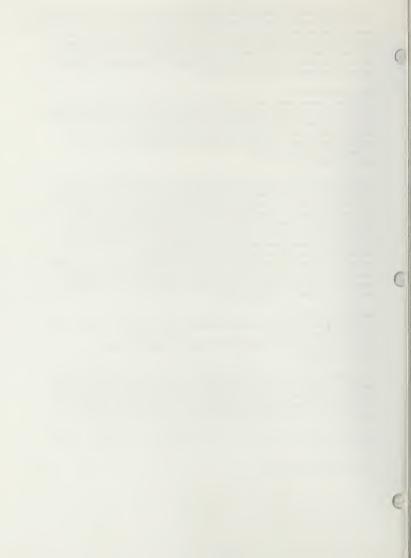
Terry Shore, Blue Water Network, urged the Authority to adopt language in the RFP to require the use of modern clean ferries.

Sherry Williams, Executive Director of TIHDI, expresses her support for the RFP. Public Comment Ends

Mr. Proud States that most of the infrastructure systems on closing military bases are generally substandard. We have done a fair amount of work in terms of evaluating both as the existing report and the draft reuse plan. We are looking at how the development team might approach deficiencies on TI. The RFQ and the development process should provide the Authority with focus on the issues once we have a draft proposal that provides a document to react to.

The Authority agrees to continue the discussion on Item #11 at the next commission meeting on March 13, 2002.

Meeting adjourned 4:01 PM



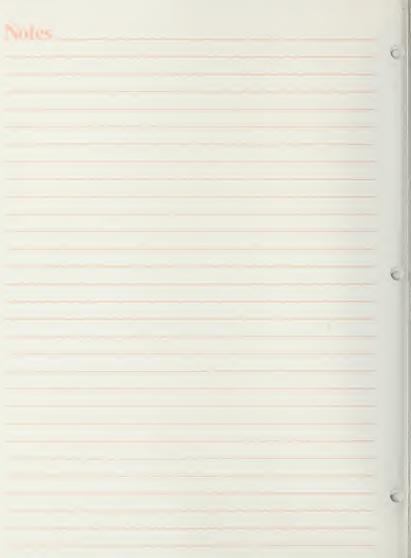




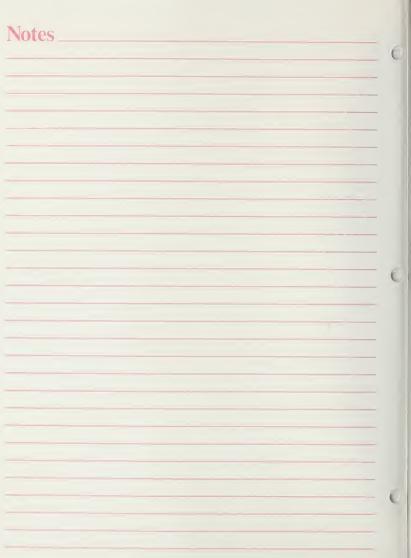




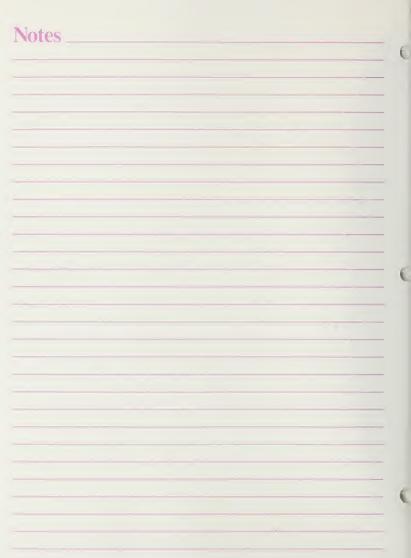












AGENDA ITEM

Treasure Island Development Authority City and County of San Francisco

Subject: Resolution approving the first amendment of the bylaws for the Treasure Island/Yerba Buena Island Citizens Advisory Board (CAB) as related to attendance.

Agenda No: 7

Contact Person/Phone: Marianne Conarroe

(415) 274-0660

Meeting Date: 03/13//2002

SUMMARY OF PROPOSED ACTION:

This item is seeking approval of the Authority for the first amendment of the bylaws for the Treasure Island/Yerba Buena Island Citizens Advisory Board (CAB). (Exhibit A)

BACKGROUND:

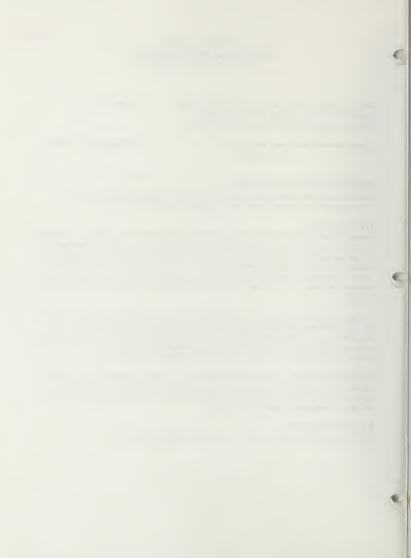
Members of the CAB were first appointed by the Mayor and the Board of Supervisors in September 2000. In determining the mission and guiding the operation of the CAB, staff consulted with other city and state agencies, such as the SF Redevelopment Agency in formulating a set of bylaws. At the first orientation meeting in November 2000, members of the CAB made comments and suggested changes to the bylaws as initially drafted. In December 2000, the Authority approved the bylaws at a regularly scheduled meeting of the Treasure Island Development Authority Board of Directors.

Currently, in Section 5. Article IV, the bylaws state that any member who is absent for four (4) of any regularly scheduled meetings during any twelve (12) month period shall automatically be terminated. Any resulting vacancy shall be filled for a new term. If the vacancy is an appointee of the Board of Supervisors, the Board of Supervisors shall appoint the replacement. If the vacancy is an appointee of the Mayor, the Mayor shall appoint the replacement. (Exhibit B)

The proposed amendment would allow any member who is subject to be terminated to submit a written appeal to the full CAB prior to the next regularly scheduled meeting, and participate as a member of a subcommittee or attend special meetings of the CAB in order to constitute a credit of one half of a meeting against any such absences.

RECOMMENDATION:

Staff recommends the approval of the first amendment to the CAB bylaws.



[TREASURE ISLAND/YERBA BUENA ISLAND CITIZENS ADVISORY BOARD FIRST AMENDMENT TO BYLAWS]

APPROVING THE FIRST AMENDMENT OF THE BYLAWS FOR THE
TREASURE ISLAND/YERBA BUENA ISLAND CITIZENS ADVISORY BOARD.

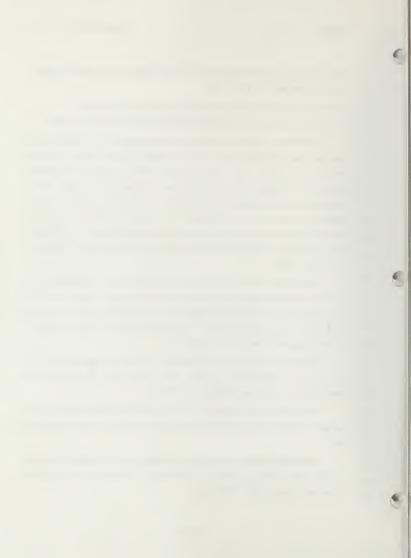
WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over former Naval Station Treasure Island (the "Base"), and (ii), with respect to those portions of the Base which are subject to the public trust for commerce, navigation and fisheries, (the "Tidelands Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such property; and

WHEREAS, The Tidelands Trust prohibits the sale of Tidelands Trust property into private ownership, generally requires that Tideland Trust property be accessible to the public and encourages public oriented uses of trust property that among other things, attract people to the waterfront, promote public recreation, protect habitat and preserve open space; and.

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998; and

WHEREAS, On February 25, 1998, the Board of Directors of the Authority passed a resolution calling for the appointments of a citizens advisory committee; and,

WHEREAS, Members of the citizens advisory committee were appointed by both the Mayor and the Board of Supervisors in accordance with Board of Supervisors Resolution No. 89-98; and



 WHEREAS, On December 13, 2000, the Board of Directors for the Authority approved the bylaws for the Treasure Island/Yerba Buena Island Citizens Advisory Board, (the "CAB"); and

WHEREAS, The CAB has met 13 times since December 2000, and has appointed members of the CAB to serve on an Outreach and a Planing and Development subcommittee; and

WHEREAS, Currently, in Section 5. Article IV, the bylaws state that any member who is absent for four (4) of any regularly scheduled meetings during any twelve (12) month period shall automatically be terminated. Any resulting vacancy shall be filled for a new term; and

WHEREAS, The first amendment would allow, any member who is subject to be terminated to submit a written appeal to the full CAB prior to the next regularly scheduled meeting, and participate as a member of a subcommittee or attend special meetings of the CAB in order to constitute a credit of one half of a meeting against any such absences; and

WHEREAS; The Executive Director and the CAB recommend the Board of Directors for the Authority approve the first amendment; now therefore, be it

RESOLVED, That the Board of Directors hereby approves the first amendment to the CAB bylaws in the form attached hereto as Exhibit A.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors at a properly noticed meeting on March 13, 2002.

William Fazande, Secretary

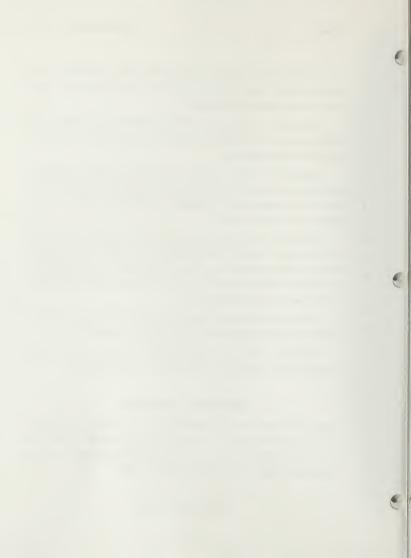




Exhibit A

Section 5. Article IV

Beginning on January 1, 2002, any member who is absent for four (4) of any regularly scheduled meetings during any twelve (12) month period shall automatically be terminated, subject to a written appeal to CAB prior to the next regularly scheduled meeting. Attendance at a scheduled subcommittee meeting or special meeting of CAB shall constitute a credit of one half of a meeting against any such absences. Any resulting vacancy shall be filled for a new term. If the vacancy is an appointee of the Board of Supervisors, the Board of Supervisors shall appoint the replacement. If the vacancy is an appointee of the Mayor, the Mayor shall appoint the replacement.



TREASURE ISLAND/YERBA BUENA ISLAND CITIZENS ADVISORY BOARD

BY-LAWS

ARTICLE I - PURPOSE.

The purpose of the Treasure Island/Yerba Buena Island Citizens Advisory Board (the "CAB") is to gather public input and opinion from diverse communities in the City and County of San Francisco (the "City") and to provide additional expertise to the Treasure Island Development Authority (the "Authority"). Specifically, the CAB will provide recommendations to the Authority concerning the final reviews and implementation of the draft base reuse plan dated July, 1996 (the "Reuse Plan"), policies and objectives for interim reuses, and other matters of importance to the future of Treasure Island and all citizens of San Francisco as the Board of Directors of the Authority may refer to the CAB from time to time. In providing advice and recommendations, the CAB shall strive to reflect the values and interests of the various communities in the City.

ARTICLE II - MEMBERS.

There shall be up to twenty-five (25) members on the CAB, fourteen (14) of whom shall be appointed by the Mayor and eleven (11) of whom shall be appointed by the Board of Supervisors. The term of each member shall be four (4) years beginning on January 1, 2001

ARTICLE III - OFFICERS.

Section 1. The Officers of the CAB shall be a Chairperson, a Vice-Chairperson, and a Secretary. Their duties shall be as follows:

Chairperson: Presides over CAB meetings; develops the monthly meeting agenda (the "Agenda") in conjunction with the Executive Director (or her designee) of the Authority, appoints subcommittees and subcommittee chairpersons; represents the CAB's actions and decisions to the Authority, other appropriate agencies, and to the community at large, or designates other CAB members to perform such duties.

Vice-Chairperson: Presides over the CAB meetings in the absence of the Chairperson; performs the other duties of the Chairperson in his/her absence.

Secretary: Posts in the office of the Authority, the San Francisco Main Library Government Information Center, and the website for the Authority notices of all regular and special meetings and the Agendas for each such meeting at least three (3) days before the time of the meeting; the meeting notices shall state the time and place of the meeting and the business to be transacted or discussed; all notices and Agendas shall comply with the requirements of the Sunshine Ordinance of the City and County of San Francisco and the Ralph M. Brown Act of the State of California; records and maintains the minutes of all regular and special meetings.

Section 2. Each of the Officers of the CAB shall be elected by a majority of the members on or before the February meeting each year unless extended by a two-thirds (2/3) vote of the duly appointed members of the CAB. The term of office for each Officer shall be one year. If the Chairperson is unable to complete the term of his/her office, the Vice-Chairperson will serve as the Chairperson for the remainder of his/her term. If the Vice-Chairperson or the Secretary is unable to complete the term of his/her office, the CAB may hold an election at a regular or special meeting for a Vice-Chairperson or Secretary (as the case may be) to serve out the remainder of his/her term.

Section 3. Any Officer of the CAB may be removed by a vote of two-thirds (2/3) of the duly appointed members of the CAB, provided that any proposed removal of any Officer shall be duly placed on the Agenda and the proposed removal is considered at a duly noticed regular meeting of the CAB.

ARTICLE IV - MEETINGS

Section 1. The first CAB meeting shall be January 18, 2001, and thereafter the CAB shall meet once a month on the third (3rd) Thursday of each month at 6:00 p.m. at a place to be agreed upon by the members of the CAB.

Section 2. Special meetings of the CAB may be called at any time by the Chair or a majority of the members of the CAB by written notice to each member of the CAB and to any other entity or person legally required to receive notice of CAB meetings. Notice shall be received at least three (3) days before the time of the meeting, and the notice shall include the time and place of the meeting and the business to be transacted.

<u>Section 3.</u> A quorum shall consist of a majority of the then duly appointed members of the CAB ("Quorum"). Once a Quorum is established, the CAB may vote on all matters duly placed on the Agenda before the CAB.

Section 4. No action, requiring a vote, will be taken by the CAB on any matter unless that matter has been placed on the Agenda for possible action. The vote of a majority of the members present at a meeting after a quorum has been established is required for passage of any motion or other action requiring a vote by a CAB member, provided that

the vote of at least a Quorum is required for passage of any such motion or action. Each member must by physically present. No proxy or absentee ballots may be counted towards acceptance or denial of any motion or other action requiring a vote. Presentations from the public and discussions on any Agenda items may take place at a duly noticed meeting without a Quorum present. Members of the CAB who are unable to attend a meeting of the CAB may communicate their written opinions of any matters on the Agenda for such meeting, and such members' written opinions will be circulated to the other CAB members at the meeting provided that the Secretary receives a copy of the written opinion(s) at least four (4) days prior to the date of the meeting.

Section 5. Beginning on January 1, 29012002, any member who is absent for four (4) of any regularly scheduled meetings during any twelve (12) month period shall automatically be terminated, subject to a written appeal to CAB prior to the next regularly scheduled meeting. Attendance at a scheduled subcommittee meeting or special meeting of CAB shall constitute a credit of one half of a meeting against any such absences. Any resulting vacancy shall be filled for a new term. If the vacancy is an appointee of the Board of Supervisors, the Board of Supervisors shall appoint the replacement. If the vacancy is an appointee of the Mayor, the Mayor shall appoint the replacement.

Section 6. Items may be added to the agenda of any CAB meeting by the affirmative vote of a majority of the members of the CAB or by the written request of any of the CAB's duly constituted committees, provided that the agenda item conforms to the requirements of these Bylaws, including without limitation, that the agenda item be a matter within the purposes of the CAB as stated in Article I above, that the affirmative vote occur at a duly noticed regular or special meeting of the CAB at which a Quorum is present, and the agenda item is duly noticed on the agenda in accordance with the requirements of the Brown Act and the Sunshine Ordinance.

ARTICLE V - PUBLIC COMMENT

The CAB shall provide opportunity for public comment on all items to be recommended to TIDA in a manner consistent with the Rules of Order for official City Commissions.

ARTICLE VI - SUBCOMMITTEES

<u>Section 1.</u> Subcommittees and Ad Hoc Committees may be established by the Chairperson as the Chairperson deems necessary.

Section 2. Each subcommittee or ad hoc committee shall consist of at least three (3) CAB members appointed by the Chairperson.

ARTICLE VII - PARLIAMENTARY AUTHORITY

The rules contained within the current edition of Robert's Rules of Order (Newly Revised) shall govern all CAB and any subcommittee or ad hoc committee meetings except where they are inconsistent with these bylaws.

ARTICLE VIII - SUNSHINE ORDINANCE

The CAB, including without limitation, all meetings of the CAB or any Subcommittee or ad hoc committee and any records maintained by the CAB or any of its members, shall be subject to the City's Sunshine Ordinance, as the same may be amended from time to time, as well as the provisions of the Ralph M. Brown Act (Sections 54950 et seq. of the Government Code) and the Public Records Act (Sections 6250 et seq. of the Government Code) of the State of California, as those laws may be amended from time to time.

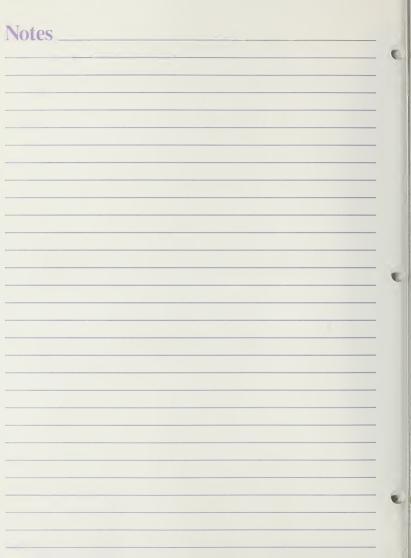
ARTICLE IX - AMENDMENT OF BY-LAWS

These by-laws may be amended at any regular meeting of the CAB by a two-thirds (2/3) vote of all duly appointed members of the CAB regardless of whether such members are present and voting, provided that the proposed amendment was submitted in writing to each CAB member at the previous regular meeting and the proposed amendment is approved by the Board of Directors of the Authority.

ARTICLE X - CONFLICT OF INTEREST

All members of the CAB shall be subject to all state and local laws regulating conflicts of interest (including without limitation, the Political Reform Act and Government Code Sections 1090, et seq.) and City ordinances proscribing conflicts of interest and incompatible activities as well as the provisions of Section C8.105 of the Charter of the City and County of San Francisco.





APPROVING THE BUDGET OF THE TREASURE ISLAND DEVELOPMENT AUTHORITY FOR FISCAL YEAR 2002-2003, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO SUBMIT THE PROPOSED BUDGET TO THE MAYOR OF THE CITY AND COUNTY OF SAN FRANCISCO FOR FURTHER REVIEW AND INCLUSION IN THE CITY'S FY 2002-2003 BUDGET.

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property, and

WHEREAS, As provided under the Authority's Bylaws, the Executive Director and the Finance Director have prepared a budget for the Authority for Fiscal Year 2002-2003, a copy of which is attached to this resolution as Exhibit A (the "FY 2002-2003 Budget Submittal"); Now, therefore be it

RESOLVED, THAT THE BOARD OF DIRECTORS OF THE TREASURE ISLAND DEVELOPMENT AUTHORITY HEREBY ADOPTS AND APPROVES THE FY 2002-2003 BUDGET AND HEREBY DIRECTS THE EXECUTIVE DIRECTOR AND THE



FINANCE DIRECTOR TO SUBMIT THE FY 2002-2003 BUDGET TO THE MAYOR OF THE CITY AND COUNTY OF SAN FRANCISCO FOR FURTHER REVIEW AND INCLUSION IN THE CITY AND COUNTY OF SAN FRANCISCO'S FY 2002-2003 BUDGET.



CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on March 13, 2002.



AGENDA ITEM Treasure Island Development Authority City and County of San Francisco

Subject: Fiscal Year 2003 Budget

Agenda Item No. Meeting of March 11, 2002

Contact/Phone: Annemarie Conroy, Executive Director

Stephen Proud, Deputy Executive Director

Eila Arbuckle, Finance Manager

274-0660

SUMMARY OF REQUESTED ACTION

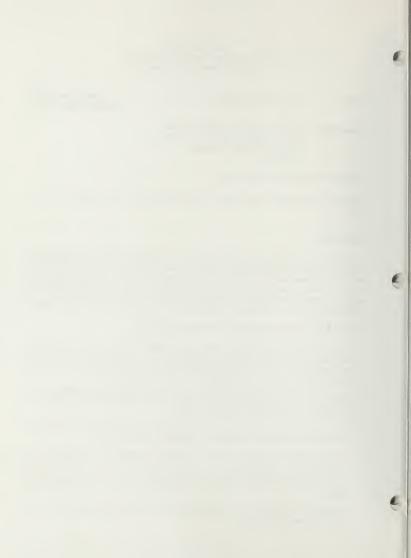
Staff request authorization to forward the TI Project's proposed FY 2003 budget to the Mayor's Office.

DISCUSSION

The long term goal of the Treasure Island Project is to develop Treasure and Yerba Buena Islands in accordance with the Citizens' Draft Reuse Plan to maximize revenues to the TI Project and, thus, eliminate the need for General Fund support; create new job opportunities for San Francisco residents, including assuring job opportunities for homeless and disadvantaged City residents; increasing recreational and Bay access venues for San Francisco and Bay Area residents and visitors; and promoting the welfare and well being of the citizens of San Francisco.

For FY 2003, the primary activities of the Authority will include:

- Negotiate the acquisition of former Naval Station Treasure Island with the U.S. Navy and
 establish a Treasure Island Redevelopment Project Area. An application for an Economic
 Development Conveyance of Treasure Island was submitted to the Navy in June 2000 and
 negotiations are projected to conclude with conveyance in January 2003.
- Prepare an Environmental Impact Report (EIR) to assure the acquisition of Treasure Island complies with the requirements of the California Environmental Quality Act (CEQA). A Draft EIR is scheduled to be released in June 2002.
- Prepare a Redevelopment Plan for certification by the Board of Supervisors. This Plan is
 projected to be submitted to the Board of Supervisors in December 2002.
- Conduct solicitation to select a Primary Developer to undertake the redevelopment of Treasure Island in compliance with the terms of the EDC and a Treasure Island Redevelopment Plan. A focused Request for Proposals will be issued in the spring of 2002 to firms who qualified through a Request for Qualifications process that was concluded in FY02.
- Coordinate the activities of the San Francisco PUC and DPW to maintain, repair, and renovate Treasure Island facilities.



- Administer leasing program for Treasure Island facilities to generate revenues sufficient to cover operating expenses and to provide for necessary capital improvements.
- Market and facilitate the use of Treasure Island facilities for movie and television production.
- Provide facilities for special events such as weddings and corporate functions.
- Provide recreation facilities for use by Island residents and other City residents.
- Facilitate the use of Island facilities for educational and job training organizations such as the Job Corps, Delancey Street Life Learning Academy, and the San Francisco Unified School District.
- Work with the John Stewart Company and the Treasure Island Homeless Development Initiative to rehabilitate, market and manage 766 units of market rate housing and 222 units of housing for formerly homeless and disadvantaged San Franciscans.
- Provide oversight to the Navy's environmental remediation program to assure that property
 conveyed to the Authority meets appropriate standards for reuse.

In FY 2003, staff projects earning revenues of \$9.62 million from facility rentals (\$8.4 million from the housing lease, and \$1.22 million from non-housing rentals and special events). Staff projects an additional \$1.95 million in grant revenues.

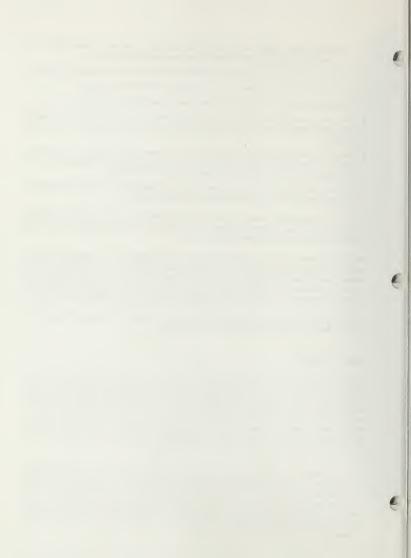
Projected expenses include: projected expenses of \$2.5 million for professional services including allocations for completion of Environmental Impact Report, Redevelopment Plan, negotiations for conveyance, and supplemental consultant services. Funds also are allocated for grounds maintenance with a TIHDI member organization and for general support of TIHDI. The funds allocated for DPW services total \$2.8 million, an increase of \$1.4 million from FY 2002.

Attached to this memorandum is a spreadsheet summarizing projected revenues and expenses for FY 2003 and the approved FY 2002 budget for comparison.

Issues & Objectives:

The core mission of the Authority is to redevelop Treasure Island and guide its transition to civilian reuse. To succeed in that mission, it is important that revenues generated on Treasure Island are invested at Treasure Island. The diversion of funds to offset the costs of municipal services only serves to delay the conversion process. The Authority recognizes that the shift in status from a former military base with limited public access to a new San Francisco neighborhood generates demands for City services comparable to other San Francisco neighborhoods. However, the residents and businesses located on Treasure Island as City taxpayers, are entitled to the full range of municipal services, and

TIDA is limited in its ability to pay for City services by the California Tidelands Trust and the provisions for a no-Cost Economic Development Conveyance (EDC) established by Congress. The Tidelands Trust requires that revenues generated from Trust lands be used for Trust purposes. As a result, revenues generated on Treasure Island (i) must be carefully tracked, (ii) should not be used to pay for City services provided to non-Trust properties such as Yerba Buena Island (including the Coast Guard), the Job Corps, and the Bay Bridge, and (iii) must be limited to reasonable costs that directly benefit the Trust.



Federal law requires that, as a condition to accepting Treasure Island at no cost via an EDC, TIDA must reinvest 100% of the proceeds from the sale, lease or similar use of property on Treasure Island (excluding tax revenues) into job generating or economic development activities related to the base for the first seven years. Since it is likely that the first conveyance of property will occur in FY 03, these provisions may be in effect. If TIDA uses revenues to pay for these services, TIDA is required to pay the Navy a comparable sum, thus forcing TIDA to pay twice for the same service.

In FY02 68% (\$6.3 million) of TIDA's expenditures were made to City departments for municipal services provided to Treasure Island, including \$4.15 million for Fire Department services. For the current fiscal year, the Authority is respectfully requesting that the Board reduce the amount of Authority funds used to offset municipal service costs, specifically revenue allocated to the Fire Department. In a presentation to the Finance Committee on July 25, 2001, the Authority summarized data showing that approximately 52% of the calls for fire service are to non-trust property (25% of the calls are for incidents on the Bay Bridge and 27% of the calls are to the federal Job Corps facility). In light of this fact, and the legal limitations related to the use of revenue from trust property and EDC conveyance, the Authority is requesting a reduction in cost recovery by the Fire Department by 50%, or approximately \$2.1 million, as a transition to full funding of City services for General Fund activities.

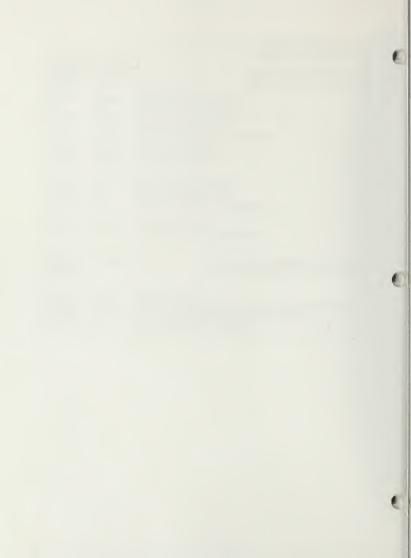
The expenditure program set forth in the FY02-03 budget will allow the Authority to achieve several objectives including: (i) the completion of the property acquisition process with the Navy; (ii) improvements to the built environment on the Island to increase safety and quality of life for the residents, (iii) the provision of recreation facilities and services to residents of the Island and City at large, and (iv) the provision of housing and additional job training opportunities for formerly homeless and disadvantaged San Franciscans.



(A) RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



Treasure Island Development Authority		
	FY 2002	FY 2003
TOTAL REVENUES Including Grant funds	6,211,435.00	11,568,793.00
TOTAL REVENUES EXcluding Grant funds	6,211,435.00	9,619,793.00
Misc. Revenues (210009)	0.00	1,000.00
Ti Special Events Revenues (210016)	400,000.00	400,000.00
YBI Special Events Revenues (210017)	0.00	0.00
TI Commercial Revenues (210018)	884,974.00	641,793.00
TI Film Permit Revenues (210019)	60,000.00	12,000.00
YBI Film Permit/ Cellsite Lease Revenues (210020)	125,000.00	125,000.00
Marina Revenues (210021)	10,000.00	40,000.00
TI Housing Revenues (210022)	4,311,461.00	7,500,000.00
YBI Housing Revenues (210023)	420,000.00	900,000.00
Grant BEFIFT Index Code 210032	0.00	879,000.00
Grant BEFPFT Index Code 210033	0.00	800,000.00
Grant BEFCSR Index Code 210034	0.00	202,500.00
Grant BEFCSR Index Code 210035 (STATE SHARE)	0.00	67,500.00
Revenues less Expenses	575.893.54	234,464.00
Including interdepartmental recovery & Grants		
TOTAL EXPENSES Including Grant funded expenditures	5,635,541.46	11,334,329.00
TOTAL EXPENSES EXcluding Grant funded expenditures		8,996,829.00
TOTAL PERSONNEL	975.331.00	4 400 205 22
		1,190,395.00
TOTAL NON PERSONNEL/NON CITY DEPTS (EXcluding grant expenditures) TOTAL SERVICES CITY DEPARTMENTS (INcluding recovery)	1,945,689.00	3,388,753.00
I O I AL SERVICES CITT DEPARTMENTS (INCluding recovery)	2,714,521.46	4,417,681.00



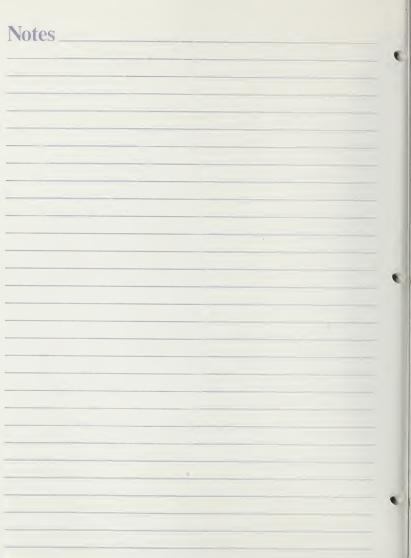
Treasure Island Development Authority		
readire island beveropment Additionly	FY 2002	FY 2003
TOTAL PERSONNEL	975,331.00	1,190,395.0
Salaries	791,182.00	942,914.00
Fringe	184,149.00	197,481.00
Temporary Salaries	0.00	50,000.00
TOTAL NON PERSONNEL/NON CITY DEPTS	1,945,689.00	5,726,253.00
INcluding GRANT Expenditures	1,945,689.00	5,726,253.00
EXcluding Grant Expenditures	1,945,689.00	3,388,753.00
021 TRAVEL	5.000.00	17,500.00
022 TRAINING & CONFERENCES	5.000.00	8,000,0
023 FIELD EXPENSES	500.00	500.00
024 MEMBERSHIPS	1,000.00	1,100.00
025 SPECIAL EVENTS/PROMOTION	18,153.00	18,153.0
027 PROF/SPECIALIZED SERVICES	1,650,786.00	2,542,500.00
028 BLDG. MAINTENANCE SERVICES	111,750.00	128,000.00
Scavenger		21,000.00
Janitorial		102,000.00
Other		5,000.0
029 EQUIPMENT MAINTENANCE	0.00	0.00
03100 EQUIPMENT RENTALS	30,000.00	30,000.00
03400	3,000.00	0.00
03500 CURRENT EXPENSES	94,000.00	93,000.00
040 OFFICE MATERIALS & SUPPLIES	26,500.00	25,000.00
05200 PYMTS TO OTHER GOVT AG.	0.00	525,000.00
05300 JUDGMENTS & CLAIMS	0.00	0.00
06000 EQUIPMENT PURCHASES	0.00	0.00
Grant Funded Expenditures Subobject 02700	0.00	2,337,500.00
Index Code 210032 Grant BEFIFT	0.00	1,000,000
Index Code 210033 Grant BEFPFT	0	1,000,000
Index Code 210034 Grant BEFCSR	0	270,000
		210,000



FY 2002-2003 BUDGET PROPOSAL		
Treasure Island Development Authority		
	FY 2002	FY 2003
TOTAL SERVICES CITY DEPARTMENTS	6,284,141.46	6,181,681.00
Including Interdepartmental Recovery	2,714,521.46	4,417,681.00
Excluding Interdepartmental Recovery	6,284,141.46	6,181,681.00
081BI Bldg Inspection	0.00	0.00
081CB Risk Management	0.00	35,000.00
081CT City Attorney	391,068.00	391,068.00
081C5 DTIS	47,301.46	29,503.00
081ET DTIS	20,000.00	42,339.00
081FD Fire	4,154,001.00	2,077,000.00
081H2 DHR Training	0.00	1,500.00
081PA Central Shops	0.00	3,000.00
081PF Central Shops Fuel	0.00	2,000.00
081PR reproduction	5,000.00	5,000.00
081PS POLICE	308,271.00	308,271.00
081UH	0.00	478,500.00
DPW	1,358,500.00	2,808,500.00
081WB BLDG REPAIR	1,000,000.00	2,450,000.00
081WE	258,500.00	258,500.00
081WM	100,000.00	100,000.00
08699 Interdepartmental Recovery	-3,569,620.00	-1,764,000.00
Fire: AEG 1G-AGF-AAA 315018	-2,100,000.00	-1,764,000.00
Police: ACM 1G-AGF-AAA 385030	-1,208,749.00	0.00
Sheriff: ASB 1G-AGF-AAA 065014	-260,871.00	0.00







AGENDA ITEM Treasure Island Development Authority City and County of San Francisco

Subject: Presentation of Focused Request for Proposal

For a Primary Developer to be Issued to Treasure Island Community Development for Agenda Item No. 9 Meeting of March 13, 2002

Development of Former Naval Station Treasure Island

Contact/Phone: Annemarie Conroy, Executive Director

Stephen Proud, Director of Development

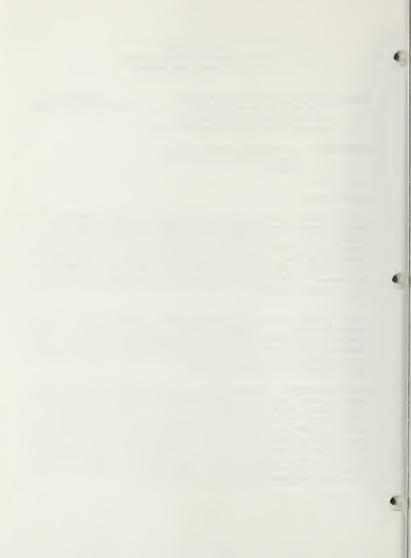
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BACKGROUND

On June 14, 2000, the Authority authorized the issuance of a Request for Qualifications for a Primary Developer ("Primary Developer RFQ") for former Naval Station Treasure Island. On October 27, 2000, staff issued approximately 500 copies of the Primary Developer RFQ to interested parties. Staff held a pre-submittal meeting on Treasure Island on December 5, 2000 to address questions from potential respondents regarding the RFQ process. Submittals for the RFQ were due to the Authority office on February 1, 2001. On that date, the Authority received two responses to the RFQ, which were distributed to the Authority Board members for review. The two responses were from Navillus Associates and Treasure Island Community Development ("TICD").

On July 11, 2001, Authority staff presented the findings of an independent review of the two proposals conducted by Keyser Marston Associates, working in conjunction with Arthur Andersen and Dean Macris. The conclusions reached by the consultant team, with the concurrence of staff, was that TICD met all the evaluation criteria set forth in the RFQ and thus is an entity that could assume the responsibility of Primary Developer for Treasure Island, and that the Navillus did not meet the evaluation criteria.

Given the low response rate to the RFQ, the Authority directed staff to conduct a brief study to assess the possible reasons for the lack of developer interest and make recommendations regarding how to proceed. On September 12, 2001, staff presented the findings of a report prepared by Bay Area Economics that concluded there are no 'quick fixes' the Authority can undertake to improve the development climate at Treasure Island. To avoid delay and to better assess whether proceeding with TICD's best achieves the Authority's goals, the Authority authorized staff to proceed with the original solicitation process by preparing a focused Request for Proposal ("RFP") for the Board's consideration. Depending on its assessment of TICD's proposal, the Authority will decide whether to enter into exclusive negotiations with TICD or seek an alternative approach to the redevelopment of Treasure Island.



REQUEST FOR PROPOSAL

The draft RFP (attached as Exhibit A) requires TICD to submit a proposal that would allow the Authority and the community to evaluate TICD's plans for Treasure Island. Staff will review the RFP with the Authority Board to solicit input, which will be incorporated in the document and presented to the Authority Board for approval. If approved, the RFP will be issued to Treasure Island Community Development.

The RFP requires detailed information to address the following:

- Development Concept. TICD must present its development concept and phasing plan
 for the Island. The development concept and phasing plan should outline TICD's
 approach to issues related to affordable housing, infrastructure & utilities, access,
 circulation, parking, seismic conditions, deconstruction/demolition, and community
 facilities.
- Urban Design/Historic Preservation. The proposal must describe TICD's overall
 approach to urban design and historic preservation for the project and for individual
 phases. The proposal should include a discussion of TICD's approach to cultural and
 historic resources and how the program meets the basic tenets of sustainable design
 and smart growth.
- Financial Proposal. As part of its submittal, TICD must include a financial proposal
 that sets forth principal business terms, which will serve as the basis for negotiating a
 term sheet and subsequent final transaction documents. The financial proposal must
 include a proforma demonstrates financial feasibility of the proposal, a description of
 the proposed transaction structure, an outline of the proposed financing plan, and a
 description of the guarantees that will be provided to the Authority.
- Management of Interim Uses. The submittal must describe TICD's approach to
 property management for parcels of land that have not been conveyed buy the Navy.
- Community Benefits Program. The proposal must include a description of a proposed Community Benefit Program that address such issues as job training, education and hiring programs, economic opportunities for TIHDI, public open space and recreation facilities and programs, community and cultural facilities, etc.
- Community Outreach Program. TICD must set forth a proposed Community Outreach Program, including a description of the proposed approach to achieving community consensus for the development concept.
- Development Team. TICD must document and provide information on any changes
 to the development team, which may have occurred since their response to the RFQ.
 In addition, TICD must provide additional information on the organizational structure
 of the team and responsibilities and the decision making process among the team
 members.



EVALUATION PROCESS

Staff is proposing a two-step process for the evaluation of the RFP response. This process would allow TICD to submit an initial proposal to the Authority and make presentations of the proposal to the Authority, members of a review committee (established by the Executive Director), and the TI/YBI Citizen's Advisory Board. Subsequent to those presentations, TICD will be given an opportunity to revise its proposal to address issues and concerns raised at those meetings, and a final proposal would be submitted to the Authority for its consideration. A review committee will evaluate and summarize the submittal prepared by TICD, based on the detailed evaluation criteria set forth in the RFP which are grouped into three categories: Project Feasibility and Timing, Land Use/Urban Design, and Economic Development/Fiscal Impacts to the City.

The analysis of the Review Committee will be presented to the Authority for its consideration at a public hearing. The Authority Board will make the final decision as to whether to proceed with TICD or take such other action as the Authority may decide in its sole and absolute discretion. If the Authority, based on TICD's final proposal, elects to proceed with TICD as a potential Master Developer for Treasure Island, the Authority will enter into an Exclusive Negotiations Agreement ("ENA") with the TICD, pursuant to which TICD will have the exclusive right to negotiate with the Authority the final transaction documents for the project.





DRAFT

TREASURE ISLAND DEVELOPMENT AUTHORITY

REQUEST FOR PROPOSAL

FOR

FORMER NAVAL STATION TREASURE ISLAND

March 2002

Claudine Cheng, President

William Fazande, Vice -President

John Elberling

Gerald Green

Susan Po-Ruffino

Marsha Rosen

Doug Wong

Annemarie Conroy, Executive Director

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I. INTRODUCTION

On October 27, 2000, the Treasure Island Development Authority (the "Authority") issued a Request for Qualifications ("RFQ") for a Primary Developer for former Naval Station Treasure Island ("Treasure Island" or the "Base"). In response, the Authority received submittals from Navillus Associates and Treasure Island Community Development ("TICD").

Following an independent review of the two proposals, the Authority determined that only TICD met the evaluation criteria set forth in the RFQ and was thus deemed qualified to submit a proposal for the Authority's consideration. This document sets forth the guidelines and requirements for a proposal from TICD for the redevelopment of Treasure Island that is consistent with the development opportunity described in the RFQ. Those guidelines and requirements are based primarily on the goals and objectives set forth in the Draft Reuse Plan (summarized in Exhibit A to this RFP) and in information contained in the RFQ.

The Authority envisions that TICD's proposal will evolve through an iterative process with interaction between TICD and Authority staff, members of the Treasure Island/Yerba Buena Island Citizens Advisory Board (CAB), interested members of the public, and the Treasure Development Authority Board. Ultimately, TICD's proposal will be submitted to the Authority Board for consideration. If TICD's proposal is deemed acceptable, the Authority will enter into an Exclusive Negotiating Agreement ("ENA") with TICD. TICD's proposal will provide the basis for preparing transaction and development agreements for Treasure Island, but final terms and conditions will be subject to further negotiations during the term of the ENA.

If TICD's proposal is not deemed acceptable, the Authority may consider alternative means for proceeding with the redevelopment of Treasure Island.

TICD should refer to the RFQ document and relevant background materials already provided for pertinent information regarding the planning objectives for the site, the development opportunity, existing conditions and market information, special development considerations, and the anticipated role of the Primary Developer at Treasure Island.

II. PROPOSAL SUBMISSION REQUIREMENTS

In 1994, a Citizen's Reuse Committee ("CRC"), representing a broad spectrum of community interests, was formed to review reuse planning efforts regarding Treasure Island by the San Francisco Planning Department and the San Francisco Redevelopment Agency, and to make future recommendations. In July 1996, the Draft Reuse Plan (the "Reuse Plan") for Treasure Island Naval Station was unanimously endorsed by the Mayor, Board of Supervisors, Planning Commission and the Citizens Reuse Committee.

The Reuse Plan identifies certain goals and objectives for the redevelopment of Treasure Island (a summary is attached as Exhibit A). In general, the Reuse Plan is built around the concept of providing increased public access, recreational, and entertainment opportunities at Treasure Island, while creating jobs and providing sustainable economic opportunities for San Francisco. The Reuse Plan identified a number of broad land uses categories for the Treasure Island, including a mix of recreation and visitor-orienten entertainment uses, hotel and conference facilities, restaurants, parks, sportsfields, a marina, film production and housing. The Reuse Plan also contemplates the interim reuse of a number of existing buildings, including public facilities and housing, to maximize the public investments that have been made in them, provide public benefits, and help support the property's successful redevelopment.

Any proposal for redeveloping Treasure Island must be consistent with the goals and objectives set forth in the Reuse Plan and the Land Use Guidelines and Development Considerations described in the RFQ. For the Authority to effectively evaluate TICD's proposal against these criteria, TICD's proposal should address each of the following:

A. DEVELOPMENT CONCEPT

Land Uses and Development Programs

The proposal must include a description (in narrative form) of TICD's approach to each type of land use and development proposed for Treasure Island, which may include the following uses: (1) hospitality, (2) entertainment, retail and other commercial uses. (3) cultural and educational. (4) residential, and (5) recreation and open space. The land use plan must correspond with financial proposal and business plan outlined in Section II.C.

For each type of land use, the proposal must (i) include a graphic depiction that shows the location of the proposed use, (ii) describe the expected types of activities, projects and tenants, (iii) describe the anticipated total gross building square footage or unit count by phase and at the end of the full build-out and the total acreage devoted to such use, (iv) describe TICD's general approach to height, density and massing of buildings, and (v) describe the compatibility of the use with adjoining/existing uses on

both a short-term and long-term basis (e.g., Job Corps, Coast Guard, Marina, etc.).

It is important to note the applicability of the Tidelands Trust and the rules governing No-Cost Economic Development Conveyances (particularly as they relate to any plans for new housing). The principles of public uses underlying the Tidelands Trust were among the most important factors shaping the Reuse Plan. Accordingly, the proposal must describe how development will expand public access to the shoreline and enhance views of the Bay and how the development program responds to the requirements of the Bay Plan as administered by the Bay Conservation and Development Commission ("BCDC") and Tidelands Trust as administered by the State Lands Commission.

In addition to the foregoing, for any proposed residential uses, the proposal must include the following: (i) expected mix of ownership and rental housing and levels of affordability (as described below in Section II.A.3), (ii) a description of how the housing program is consistent with the provisions set forth in the Treasure Island Homeless Development Initiative ("TIHDI") agreement, (iii) a description of how the housing program is consistent with the goals and policies set forth in the Reuse Plan, including the acreage dedicated to housing and the total unit count, (iv) a description of how the housing program is consistent with the provisions of the No-Cost Economic Development Conveyance transfer of property from the Navy (as described in the RFQ), and (viii) a discussion of a Trust Exchange that would allow the housing program to comply with Tidelands Trust and Bay Plan requirements.

In addition, if new housing is contemplated, either to replace existing units, add new units, or some combination of both, it will be necessary to remove the Tidelands Trust designation from those areas of Treasure Island proper where new units are to be constructed. In general, removing the Tidelands Trust designation would likely involve a "exchange" or "swap" of the Trust designation from Treasure Island proper onto portions of Yerba Buena Island. A summary of the key principles governing a Tidelands Trust exchange at Treasure Island is provided in the Appendix to the RFQ. Among other things, the proposal should describe any proposed exchange of the Tidelands Trust and how such an exchange meets the requirements described in the RFQ. The proposal should include a graphic depiction of the proposed configuration of the Trust Exchange and describe the number of acres included from "sending" and "receiving" sites.

2. Phasing Plan

TICD's proposal must include a preliminary phasing plan and estimated development schedule, including pre-development and development

activities, indicating in number of months the estimated time each portion of the project is expected to take.

The preliminary phasing plan shall depict graphically and in narrative form the rational behind the phasing of the development program, including a discussion of:

- ✓ The phasing of infrastructure, seismic improvements, and other elements of horizontal land development (see Items 7 & 8 below);
- √ The phasing of vertical development elements;
- How phasing is affected by the timing and manner of environmental remediation at Treasure Island;
- How the phasing plan ensures the compatibility of uses throughout the development process, including how existing uses and lessees (e.g., the Job Corps) will be incorporated into the project on an interim and long term basis.

The Phasing Plan should also include a general description of TICD's overall approach to the project and which portions of the development program TICD will be involved with. For example, the proposal should describe if TICD expects to simply provide the backbone infrastructure to a large parcel that would be disposed of to a third-party developer, or does TICD expect to build in-tract infrastructure and/or conduct the final vertical development at the site, or a combination of both.

Affordable Housing

The Authority is committed to providing a full range of affordable housing options at Treasure Island. As noted above, TICD's proposal should indicate the total number of affordable units within each phase of development and the levels of affordability. More specifically, TICD's proposal should discuss how TICD will address the minimum housing requirements in the TIHDl agreement set forth below, and what efforts TICD would make to expand the number of units and range of affordable housing options beyond the minimum requirements:

- TICD's approach to the existing TIHDI units and whether or not TICD intends to exercise the "buy-out" provision in the TIHDI agreement for any of the units on TI or YBI:
- The amount of acreage which will be set aside for TIHDI for affordable housing (based on any new housing proposed); and
- TICD's plan for inclusionary affordable housing that meets the 15% standard set forth in the TIHDI agreement and the tenure (rental vs. ownership) of those units.

4. Access, Transportation, Circulation and Parking

Issues of access and transportation are among the most critical considerations for the development of Treasure Island. Therefore, the proposal must contain a detailed transportation plan that maximizes mobility for area residents, employees, and visitors to the island, helps guide development and improves the environment, and fosters connections between Treasure Island and the rest of San Francisco. Consistent with this guideline, the proposal must identify:

- The "On-Island" transportation network including vehicular and pedestrian circulation pattern, bicycle and pedestrian systems, trafficcalming measures, intra-Island transit services, and the development of alternative fuel and/or electric charging stations.
- A plan for access to and from Treasure Island, San Francisco and East Bay Communities that utilizes transit modes other than autos. The proposal should discuss how water transit service would be integrated into the transportation network as a means of access to the Island and the role TICD will assume in providing water transit service to the Island. Options include, but are not limited to, ferry transit and water taxis consistent with the Bay Council's recently adopted Regional Water Transportation Plan
- A parking plan that sets forth the amount of parking to be provided for each type of land use, the manner in which parking will be provided and specifically how shared parking arrangements will be incorporated into the overall development program.

5. Infrastructure Rehabilitation/Replacement Program

One of the most common issues associated with military base conversion involves the transfer of infrastructure systems that have been developed and maintained by the military to standards that are different than those utilized by civilian agencies. Thus, the proposal must include a description of proposed infrastructure improvements for each phase of the project through build-out. TICD must describe how the proposed improvements to the various infrastructure systems will incorporate sustainable design elements to minimize impacts to the environment (e.g., capturing storm water runoff in a fresh water treatment wetland prior to discharge to the Bay).

6. Seismic and Geotechnical Conditions

Treasure Island proper (excluding most of Yerba Buena) was created using non-engineered fill and as result, is expected to perform poorly during a major seismic event. In the event of an earthquake of magnitude 7 or greater, there is a significant risk that existing buildings and other structures and improvements located on Treasure Island, without further improvements, may fail structurally and collapse. Of particular concern are the perimeter dikes that surround Treasure Island. In the event of a seismic occurrence, these dikes may experience structural failure resulting in severe damage to the Island.

Although Treasure Island fared well in the 1989 Loma Prieta earthquake, long-term development of Treasure Island will require careful planning to address seismic conditions. While efficiencies may be gained through improving large areas of Treasure Island at the same time, the entire land area of Treasure Island does not necessarily need to be improved in one single step and all at once. It may be possible to phase improvements to allow incremental development to occur over time and, depending on the nature of the proposed long-term uses, some of the areas may require less substantial seismic improvements.

As noted above, the proposal must indicate TICD's approach to seismic conditions at Treasure Island to improve public safety and the phasing of those improvements. The proposal should identify the construction techniques that will be used, and should differentiate between improvements to existing buildings, improvements to the perimeter dike and causeway, and improvements related to new buildings/facilities.

7. <u>Demolition and Deconstruction</u>

TICD must identify buildings they intend to demolish/deconstruct as part of the development program. TICD shall describe the program for deconstruction, demolition and material, reuse, including community participation in such program. The deconstruction program shall address State law requiring that the City achieve significant reduction in its landfill waste.

8. Community Facilities and Services

The proposal must identify proposed community facilities, such as police, fire, school, library, etc. and describe how TICD will provide and maintain appropriate community services and facilities for area residents, employees and businesses during all phases of development.

B. URBAN DESIGN/HISTORIC PRESERVATION

Redevelopment of Treasure Island requires careful consideration of the context within which the project will take place. While many of the buildings and facilities may be demolished/deconstructed to create functional and desirable development sites, there are several existing uses and historic and cultural resources that must be woven into the built environment. As Treasure Island embarks on its "third life", a conscious and purposeful effort will be required to change the character of the facility from a post war military installation to a destination that is an integral part of the City's urban fabric.

Design considerations include the restoration and creation of public spaces and amenities, heightening the sense of immediacy between the Island and the City, designing new facilities and structures that compliment and unify disparate functional and architectural elements, and the preservation of structures and places of significant historic interest.

In addition, the redevelopment of Treasure Island represents an outstanding opportunity to incorporate the best practices of sustainable design and smart growth into a land use and urban design program. These may include such elements as energy conservation, development of "green buildings", reuse and recycling of building materials, preservation and expansion of open space, multimodal transit, a mix of land uses, etc.

The proposal must describe TICD's overall approach to urban design for the project and for individual phases. The proposal should include a discussion of TICD's approach to cultural and historic resources and how the program meets the basic tenets of sustainable design and smart growth. To assist in the evaluation, the proposal should include perspectives, graphics and /or other images that conceptually illustrate the proposed urban design elements (e.g., building types, initial building character and siting, key identity elements amenities and other features, etc.) and are keyed to the development plan.

C. FINANCIAL PROPOSAL

As part of its submittal, TICD must include a financial proposal that sets forth principal business terms, which will serve as the basis for negotiating a term sheet and subsequent final transaction documents. The submittal must include the following:

Feasibility Plan and ProForma(s)

The submittal must include a complete ProForma of the anticipated revenues and expenses of the proposed project, including

- A clear description of financial assumptions and annual and cumulative cash flow projections for the full build-out period (by phase and product type), including pre-development phases and interim uses;
- A range of expected lease rates for commercial product type, a range of expected rental rates and sales prices (if applicable) for housing, and preliminary market research to support the ProForma assumptions;
- A preliminary budget of development costs, specifying, among other items: pre-development costs; applicable development fees and exactions under the City's Planning Code and other ordinances; estimated seismic and infrastructure costs; and any TICD overhead, fees and contingencies;
- Project returns and the TICD's return requirements, hurdle rates or threshold rates of return.
- A financing plan for capital costs from inception to buildout (see Section II.C.3 below); and
- A preliminary plan to finance maintenance and repair of public infrastructure, open space and community and cultural facilities and the provision of new public services required as a result of development

The Authority recognizes that the ProForma will reflect projections only, based on then current information. The Authority further recognizes that the projections as to early phases of the project will be more reliable than projections as to later phases.

2. Transaction Structure and Business Offer

The Authority expects to receive title to Treasure Island from the Navy as parcels are successfully remediated. The Authority expects the Navy will convey the Hotel Parcel, the South Waterfront Parcel, the Treasure Island Core Parcel, the Marina Parcel and the Yerba Buena Island Parcel (as shown on the Attachment B), following certification of the EIS/EIR and the issuance of a Record of Decision (ROD) by the Navy. The remaining parcels will be conveyed as soon as the Navy completes all required environmental remediation. In addition, as described in Section II.D (below), the Authority expects to enter into a Lease in Furtherance of Conveyance (LIFOC) for the those portions of the Base not initially transferred in fee.

As noted earlier, Treasure Island proper (and small portions of YBI) are subject the Tidelands Trust which prohibits the conveyance of trust property to private owners. However, such property can be leased for trust

uses at fair market value under a long-term ground lease, and properties unencumbered by the Trust can be transferred in fee. Based on the land use program set forth in the proposal (including any proposed Trust Exchange), TICD should indicate which land it expects will be conveyed in fee and which land would be conveyed by lease.

For leased property, TICD should propose a rental structure including base and percentage rent. For property to be conveyed in fee, TICD should describe whether land value would be paid as an up-front purchase price, a back-end participation or some combination of both. TICD should also project City's share of project revenues under both lease and fee transaction structures.

Financing

It is the expectation of the City and the Authority that the proposed project be financially self-sufficient. To improve the project's feasibility, the Authority may (i) allow leasehold financing of its property on commercially reasonable terms, (ii) allow project revenues, including revenues from housing and other interim leases, to be reinvested in the project, and (iii) to the extent of demonstrated need, assist with public financing, such as tax increment bonds and revenue bonds (secured by revenue from the housing and other appropriate sources). However, the City does not intend to spend General Fund dollars for property management, infrastructure improvements, or other capital needs associated with redeveloping the Base.

TICD's submittal must describe its plans for obtaining the equity capital and debt financing necessary to undertake the development, including rates of return these sources are likely to require. Subject to the objectives described in the preceding paragraph, TICD should specify any proposed types of public financing and the purposes for which the proceeds of any such public financing will be used.

Guaranty or Other Financial Assurances

TICD has created a special purpose limited liability company for the purpose of submitting its qualifications under the RFQ and ultimately for the purposes of acquiring, managing and redeveloping Treasure Island. However, it is not clear whether the members of TICD are jointly and severably liable for the obligations of TICD. Thus, TICD must describe how it intends to provide an adequate means to assure the Authority of sufficient financial wherewithal and commitment to fulfill the financial, indemnification and other performance obligations of the team, even if one or more constituent members withdraws from TICD. Subject to agreement of the parties, such means may include, by way of example

only and without limitation, guaranties from suitable entities, performance deposits, and/or surety bonds that are appropriate for the guaranteed obligations.

D. MANAGEMENT OF INTERIM USES

As part of the Transaction Documents, the Authority intends to sublease to TICD all of the unconveyed Parcels of the Base that are subject to the LIFOC until those Parcels are conveyed by the Navy. The Authority expects to transfer to TICD all of the protection, maintenance and other responsibilities required by the Navy under the LIFOC. The submittal must describe the expected interim uses and how TICD proposes to manage those interim uses on the leased premises in relation to the redevelopment of the conveyed Parcels.

E. COMMUNITY BENEFITS PROGRAM

The submittal must include a narrative description of a proposed Community Benefit Program, including a description of the program as it relates to the following:

- Permanent and construction jobs, including a description of job training, education and hiring programs consistent with the goals and objectives set forth above and with applicable Authority and City requirements (including First Source Hiring, the TIHDI Job Broker Program, and Equal Opportunity Programs), and of projected numbers and types of jobs by phase and at the full build-out of the project
- Economic development opportunities offered to TIHDI
- Public open space and recreation facilities
- · Community and cultural facilities

F. COMMUNITY OUTREACH PROGRAM

The submittal must include a description of a proposed Community Outreach Program, including a description of the proposed approach to achieving community consensus for the development concept, outreach to the Citizens Advisory Board and other community-based organizations and the relationship of the Regulatory Approvals and Transaction Documents to each step in the community consensus-building process.

G. DEVELOPMENT TEAM

TICD shall augment earlier information that was provided in response to the RFQ by furnishing a description of (i) any new or changed members of the development team, including all key individuals at every level, (ii) the organizational structure of TICD and the decision making process among team members and within the LLC, (iii) the development responsibilities of each primary entity, (iv) all consultants under contract for pre-development and development activities, and (v) a list of contacts, addresses and phone numbers for all members of the development team.

III. EVALUATION CRITERIA:

The Authority shall determine, in its sole and absolute discretion, whether TICD's proposal sufficiently furthers the goals and objectives of the Reuse Plan to justify proceeding to exclusive negotiations with TICD at this time. In making that determination, the Authority may consider, among other things, the following:

A. Project Feasibility and Timing

These criteria consider the feasibility of TICD's proposed Development Concept and the likely time frames for completion of the Project. Assessment of these criteria will include the following:

- <u>Financial and Market Feasibility</u>. Factors include, (i) financial capacity and adequacy
 of working capital of the respondent to cover initial capital expenditures and
 operating costs through development, (ii) diversity of revenue generating uses, (iii)
 reasonableness of market assumptions underlying the Pro-Forma, (iv) reasonableness
 of TICD's expected returns, (v) feasibility of proposed public financing mechanisms,
 (vi) reasonableness of TICD's cost estimates, (vii) appropriateness of the proposed
 transaction structure, and (viii) adequacy of proposed financial assurances.
- Regulatory Feasibility. Factors include consistency of the respondent's Development
 Concept with (i) Tidelands Trust considerations and/or reasonableness of any
 proposed Tidelands Trust exchanges, (ii) applicable BCDC Bay Plan designations,
 (iii) federal base closure requirements of an Economic Development Conveyance,
 including job generation and inclusion of new housing only to the extent necessary to
 achieve "financial feasibility", and (iv) the pending environmental review of the
 Reuse Plan under NEPA and CEOA.
- Market Feasibility. Factors include (i) diversity of revenue generating uses, (ii)
 flexibility of Development Concept to respond to changes in market conditions, and
 (iii).
- <u>Technical Feasibility.</u> Factors include the extent to which TICD's Development
 Concept addresses the issues related to (i) new infrastructure and utility systems,
 including electric, gas, telecommunications, potable water, storm-water, and
 wastewater treatment systems, (ii) seismic improvements to the causeway and
 perimeter dike needed to reduce life-safety risks, (iii) redesign and construction of
 arterial roadways and streetscapes, and (iv) environmental remediation of the Base by
 the Navy.
- <u>Phasing/Timing</u> Factors include (i) the timeline for implementation of the
 Development Concept, including how quickly the respondent's Development
 Concept will cause seismic strengthening of key areas of the Base, including the
 causeway and perimeter dikes, (ii) ability to implement the Development Concept
 with minimal interruption to existing uses and occupants, including residents, (iii)
 overall viability of and schedule for implementing respondent's Development

Concept, including the use of incremental or phased development to maximize land value.

B. <u>Land Use Plan/Urban Design</u>

These criteria consider whether TICD's Development Concept meets the land use objectives set forth in the Reuse Plan. Assessment of these criteria include the extent to which TICD's Development Concept achieves the following:

- Creates a broad mix of mutually supportive, publicly oriented uses, with an emphasis
 on recreation, cultural, educational and entertainment uses that appeal to local and
 regional residents and tourists.
- Provides for land uses that are compatible with each other and existing uses throughout all phases of development.
- Preserves structures and places of historic significance and architectural interest.
- Provides a variety of housing opportunities with emphasis on maximizing the number
 of affordable housing units available to all income ranges and satisfies the housing
 provisions set forth in the TIHDI agreement.
- Improves public access to the bay, including increased waterfront recreational
 opportunities and uses that enliven and improve access to the water's edge.
- Improves the appearance and identity of the Island by heightening its visibility, prominence and sense of immediacy with the rest of the City, and orienting development to take advantage of the island setting, outstanding views. and close proximity to downtown San Francisco.
- Maximizes public amenities such as parks and open space for passive and active recreational use and creates a continuous open corridor along the shoreline edge.
- Protects hillside and shoreline open space on Yerba Buena Island and focuses open space on the water and other natural features to provide a sense of nature and visual contrast with developed portions of the Island.
- Protects important biological resources and maintains and improve the quality of the surrounding natural environment, including to the extent feasible, the creation of wetlands to treat storm run-off.
- Minimizes potential environmental impacts related to development through the use of "green building" practices. Utilizes best practices for sustainable development and resource management throughout the life of the Project. Addresses environmental factors such as wind and noise in the site, building, and street design. Promotes energy conservation and efficiency.
- Minimizes increases in automobile traffic on the Island and provides for alternative transit modes as the primary means of access, including creating viable and attractive ferry and/or other water transit services.

- Create a safe, attractive, pedestrian friendly multi-modal system of streets, walkways and bike paths. Developer innovative modes of intra-island transportation.
- Provides facilities for essential public services such as fire and police protection, an elementary school, and public works/utility operations.

C. Economic Development/Financial Impacts on City.

These criteria weigh the overall fiscal impacts of the Development Concept on the City and the Authority. Assessment will include the following:

- The net fiscal impact of TICD's proposal on the City, including (i) projected new lease, land sale and tax revenues to the Authority or the City and (ii) the extent to which development requires public funding.
- The extent to which respondent's Development Concept will enable the Authority to realize the job generation goals outlined in the EDC application to the Navy and contribute to the economic vitality of the City and the region.
- Proposed terms of Base Rent and City's Participation in surplus revenue, including the percentages, triggering events and threshold (hurdle rate) for any such Authority participation.
- The likelihood that the Authority will receive an appropriate return for over the life of the Project from leases, revenue participation, land sales, and other redevelopment activities.
- The extent to which TICD minimizes the Authority's interim asset management costs by accepting such operating responsibilities and costs.
- The extent to which TICD minimizes the Authority's legal and financial liabilities associated with environmental remediation.
- The extent to which TICD's Community Benefit Program demonstrates a
 commitment to create or retain jobs for San Francisco residents, especially
 economically disadvantaged persons, and to provide minority and women-owned
 business enterprises with an equal opportunity to ecompete for and participate in
 project development and operations
- The extent to which respondent's Community Benefit Program demonstrates TICD's commitment to work cooperatively with the TIHDI Job Broker Program and the scope and quality of economic development opportunities for TIHDI member organizations.

IV. TIMELINE AND EVALUATION PROCESS ::

A. <u>Schedule</u>. The Authority intends to proceed with its evaluation of TICD's proposal as follows:

1)	Pre-Submittal Conference/Q&A	March, 2001
2)	Initial Responses to RFPs due	May, 2001
3)	Proposal Presentations at Authority/CAB Workshops	June, 2001
4)	Final Revised Proposal Due	July, 2001
5)	Evaluation of Proposal by CAB and Authority	July, 2001
6)	If Proposal is Approved by Authority, Enter into ENA	August 2001

- B. <u>Submittal</u>. TICD must deliver one readily reproducible complete set of its initial response and at least 35 copies to the Authority no later than 5 p.m. on
- C. Evaluation of Initial Proposal by Authority and CAB. The Authority intends to hold a special workshop at which TICD will be given the opportunity to make a brief presentation regarding its initial proposal, and then answer questions from members of the Authority and/or representatives of the Review Committee. It also expected that TICD would be asked to make a separate presentation of their proposal to the Treasure Island/Yerba Buena Island Citizen's Advisory Board ("CAB"). Subsequent to those presentations, TICD will be given an opportunity to revise its proposal to further address issues and concerns raised at those meetings.
- D. Evaluation of Final Proposal. A review committee established by the Authority's Executive Director will review TICD's final proposal and make a recommendation to the Authority Board as to whether TICD's final proposal meets the evaluation criteria described in Section III of this RFP. In arriving at its recommendation, the Review Committee will evaluate the contents of TICD's proposal and may conduct follow-up interviews. The Review Committee may also consider in its evaluation TICD's presentations to the Authority and the CAB.
- E. <u>Recommendation to Authority</u>. The recommendations of the Review Committee will be presented to the Authority for its consideration at a public hearing. The Authority Board will make the final decision as to whether to proceed with TICD or take such other action as the Authority may decide in its sole and absolute discretion.
- F. Exclusive Negotiating Agreement. If the Authority, based on TICD's final proposal, elects to proceed with TICD as a potential Master Developer for Treasure Island, the Authority will enter into an Exclusive Negotiations Agreement ("ENA") with the TICD, pursuant to which TICD will have the exclusive right to develop the Project for the term of the ENA. Under the ENA, TICD will be required to bear all costs of environmental review and any other regulatory approvals required for the Authority to

enter into the Transaction Documents, including, without limitation, any building permit, planning application or impact fees assessed by the City or any other governmental agency with jurisdiction. Other agencies which may have regulatory jurisdiction over the Project include the City's Planning Department (which among other duties is responsible for environmental review, makes General Plan consistency findings, and determines compliance with San Francisco Planning Code provisions implementing the Coastal Zone Management Act) and Arts Commission, the State Lands Commission, the Bay Conservation Development Corporation (BCDC), the California Coastal Authority, the Army Corps of Engineers and the State Department of Fish and Game. The Authority will cooperate with the successful respondent's efforts in obtaining such regulatory approvals. The ENA will also require TICD to reimburse the Authority for all of its transaction costs related to the preparation and negotiation of the Transaction Documents, including the Authority's consultant and legal costs. Based on projects of comparable size and complexity, TICD should expect those costs to equal approximately \$1.5 to \$2.5 million per year until final approval of the transaction documents.

G. Negotiate Transaction Documents and Obtain Project Approvals. Pursuant to a specific schedule of performance set forth in the ENA, the Authority and the Developer will negotiate and prepare any deeds, leases, development agreements and other documents related to the development of the Project (together, the "Transaction Documents"). After the completion of all required environmental review under California Environmental Quality Act ("CEQA") and any regulatory approvals required as a condition of such approvals, the Transaction Documents will be presented to the Authority, the City's Board of Supervisors and the Mayor, for approval in their respective sole and absolute discretion. Prior to such approvals, the Authority will retain the sole and absolute discretion to (i) make modifications to the Transaction Documents or the Project necessary to mitigate significant environmental impacts, or (ii) elect not to proceed with the Transaction Documents or the Project.

V. TERMS AND CONDITIONS.

- Proposal Execution. TICD's proposal must be signed in ink, with TICD's address. Evidence of the legal status of TICD, whether individual, partnership, corporation, Limited Liability Company, county or municipality shall also be provided. Corporation shall execute the proposal by its duly authorized officers in accordance with its corporate bylaws and shall list the State in which it is incorporated. A partnership shall give full names and addresses of all partners and shall list the State in which it is organized and shall execute the proposal by its duly authorized partners in accordance with the partnership agreement. A limited liability company shall give full names and addresses of all members and shall list the State in which it is organized and shall execute the proposal by its duly authorized members or managers in accordance with its operating agreement. Partnerships, limited liability companies, and individuals shall be required to state the names of all persons involved in the proposal. The place of residence of each partner, member, or individual, or the office address in case of a firm or company, including state, zip code and telephone number, shall be given after each name. If TICD is formed as a joint venture consisting of a combination of any of the above entities, each joint venturer shall execute the proposal. Anyone signing a proposal as an agent of a firm or entity shall submit legal evidence of his or her authority to do so with the proposal.
- B. <u>Proposal Security Deposit.</u> In addition to the One Hundred Thousand Dollar (\$100,0000) deposit submitted with the RFQ, TICD must submit with its final proposal an additional proposal security deposit in the form of a forfeiture-type bond, a check certified by a responsible bank, or a cashier's check payable to the City and County of San Francisco in the amount of One Hundred Thousand Dollars (\$100,000). If the Authority does not elect to proceed to exclusive negotiations with TICD, its deposits will be returned without interest. If the Authority elects to proceed with exclusive negotiations with TICD, upon execution of the ENA (as described below) TICD will be required to increase its deposit by an additional One Hundred and Forty Thousand Dollars (\$150,000), to a total of Three Hundred and Fifty Thousand Dollars (\$350,000), at which time the deposit would serve as the first advance to the Authority for its transaction costs under the ENA.
- C. <u>Grounds for Rejection</u>. Any false, incomplete, or unresponsive statements in connection with TICD's proposal may be cause for its rejection at the City's discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the Authority and its judgment shall be final.
- D. Invitation to Submit Proposals, No Obligations by City to Contract. This RFP is only an invitation to submit a proposal, and does not commit the Authority or the City in any way to enter into the Transaction Documents or to proceed with the RFP or the proposed Project. In addition, the issuance of this RFP does not obligate the Authority or the City to pay any costs incurred by TICD in connection with (i) the preparation of a response to this RFP, (ii) any supplements or modifications of this RFP or (iii) negotiations with the Authority or the City or other party arising out of or relating to this

- RFP. All costs incurred in the preparation and presentation of TICD's proposal in response to this RFP shall be borne solely by TICD.
- E. <u>Reservation of Rights by City.</u> The Authority expressly reserves the right at any time and from time to time, and for its own convenience, to do any or all of the following:
 - Waive or correct any immaterial defect or technical error in any response, proposal, or proposal procedure, as part of the RFP or any subsequent negotiation process.
 - 2. Reject any and all proposals, without indicating any reason for such rejection.
 - Request that certain or all respondents to this RFP supplement or modify all or certain aspects of the information or proposals submitted.
 - 4. Reissue an RFP.
 - Modify the selection procedure, the scope of the proposed Project or the required responses.
 - Extend deadlines for accepting responses, requesting amendments to responses after expiration of deadlines, or negotiating or approving final agreements.
- F. <u>TICD Certification</u>. By submitting a proposal, TICD certifies to the Authority that it has not paid nor agreed to pay and will not pay or agree to pay any fee, or any other thing of value contingent on the award of a contract for the project to any City or Authority employee or official, or to any contracting consultant hired by the City or the Authority for purposes of this project.
- G. <u>Proposal as a Public Record.</u> Generally, all documentation including financial information submitted by TICD to the City or the Authority are public records under State and local law, including the City's Sunshine Ordinance. TICD will clearly designate those financial records that it in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the Authority will attempt to reasonably maintain the confidentiality of such financial information, consistent with the Authority's general practices for maintaining the confidentiality of such information. However, the Authority will not under any circumstances be responsible for any damages or losses incurred by TICD or any other person or entity because of the release of such financial information.

THEREFORE, IT IS IMPORTANT FOR TICD TO CLEARLY IDENTIFY IN ITS PROPOSAL THOSE FINANCIAL RECORDS OR OTHER INFORMATION THAT TICD IN GOOD FAITH DETERMINES TO BE A TRADE SECRET OR CONFIDENTIAL PROPRIETY INFORMATION PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. TO THE EXTENT PERMITTED BY LAW, THE AUTHORITY WILL ATTEMPT TO REASONABLY MAINTAIN THE CONFIDENTIALITY OF SUCH FINANCIAL INFORMATION, CONSISTENT WITH THE AUTHORITY'S GENERAL PRACTICES FOR MAINTAINING THE

CONFIDENTIALITY OF SUCH INFORMATION, AND INFORMATION SO MARKED WILL BE REDACTED FROM THE CÓPIES PRESENTED TO THE PUBLIC. HOWEVER, GENERALLY, ALL DOCUMENTATION INCLUDING FINANCIAL INFORMATION SUBMITTED BY TICD TO THE CITY OR THE AUTHORITY ARE PUBLIC RECORDS UNDER STATE AND LOCAL LAW, INCLUDING THE CITY'S SUNSHINE ORDINANCE AND NEITHER THE CITY NOR THE AUTHORITY WILL BE RESPONSIBLE FOR ANY DAMAGES OR LOSSES INCURRED BY TICD OR ANY OTHER PERSON OR ENTITY BECAUSE OF THE RELEASE OF SUCH FINANCIAL INFORMATION.

- H. Return of Materials. The Authority will not return TICD's proposal or any information submitted in connection with it unless TICD has properly designated financial portions of the proposal as confidential at the time of proposal in accordance with the terms above and has then clearly requested that such information be returned, and provided that the Authority is legally permitted to return such documents.
- L. <u>Right to Disqualify</u>. The Authority reserves the right to disqualify TICD on the basis of any real or apparent conflict of interest that is disclosed by the responses submitted or other data available to the Authority. This disqualification is at the sole discretion of the Authority.
- M. Waiver of Claims Against the City and the Authority. TICD shall not obtain by its response to this RFP any claim against the City or the Authority by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities of defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into any such lease, any statement, representations, acts or omissions of the Authority or the City or its agents, the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of all or any of the foregoing.

Without limiting the generality of the foregoing, the information presented in or in connection with the RFQ and this RFP, including the EDC Application and the information in the Developer's Packet is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that any information contained in or related to the RFQ or this RFP is accurate and complete. No representations, assurances, or warranties pertaining to the accuracy of such information are or will be provided by the Authority or the City or its consultants and no claim may be brought against the City or the Authority, or any of their respective consultants as a result of the presentation of such information, irrespective of its accuracy.

EXHIBIT A - SUMMARY OF GOALS AND OBJECTIVES

The Draft Reuse Plan for former Naval Station Treasure Island ("Treasure Island"), endorsed by the City's Planning Commission and Board of Supervisors in July of 1996, sets forth broad land use planning objectives and polices for the redevelopment of Treasure Island, which are summarized below.

I. Land Uses

- Provide a broad mix of mutually supportive, publicly oriented attractions at Treasure Island, emphasizing marine-related, recreational, entertainment, and hospitality uses.
- Emphasize uses that take advantage of Treasure Island's unique position in the center
 of the San Francisco Bay and its outstanding views. Heighten the visibility and sense
 of immediacy between Treasure Island and the rest of the City.
- Pursue uses that will enliven the water's edge and improve public access to the Bay.
 Ensure continuos public access to the shoreline edge.
- Create areas for active and passive recreational uses such as ball fields and other recreational activities, open space, trails, and other park-like amenities, as well as water-oriented recreational activities.
- Preserve public open spaces that focuses on Treasure Island's natural features and island setting and which provide a sense of nature and visual contrast to developed portions of Treasure Island
- Maintain and improve the quality of Treasure Island's natural environment, including, to the extent feasible, the development of wet lands.
- Encourage the preservation of buildings with historic and/or architectural significance.
- Permit institutional uses that are compatible with the Redevelopment Plan and which serve a broad range of public purposes. Focus institutional uses on the reuse of existing specialized facilities.

II Economic Development

- Promote activities that will create new jobs and contribute to the economic vitality of the City and the region.
- Purse development that will generate sufficient revenues to pay for necessary improvements to Treasure Island.
- Allow for flexibility in acceptable land uses to adapt to changing market conditions and changes in technology.

- Ensure the broad participation of minority, women-owned, local and disadvantaged businesses in all facets of the implementation of the Redevelopment Plan.
- Foster economic development opportunities for homeless service providers that will
 give them a stake in the successful redevelopment of Treasure Island.
- Encourage interaction among economic activities to promote economic selfsufficiency.

III. Transportation.

- Attempt to minimize increases in automobile traffic on the San Francisco-Oakland Bay Bridge, particularly during peak weekday and weekend periods.
- Encourage uses that can be supported by mass and/or public transit, particularly water-borne transportation.
- Establish coordinated local and regional transit plans for providing access to Treasure Island, and coordinate new development with existing, new and anticipated transportation systems.
- Establish water transportation connections to the rest of the region. Promote a
 regional system of ferry landings that are accessible by diverse travel modes.
- Encourage the use of water taxis to support regularly scheduled ferries.
- Develop safe, attractive, pedestrian friendly multi-modal system of streets, walk ways
 and bike paths that can accommodate bicycle and pedestrian traffic along with
 shuttles, transit buses and automobiles. Consider innovative, non-traditional, means
 of circulating people throughout Treasure Island.

IV. Interim Uses

- Permit interim uses that maintain flexibility, and facilitate and are compatible with long-term reuse.
- Focus interim reuse on existing structures that can feasibly be operated in compliance
 with applicable laws and in a manner and for a term consistent with the long-term
 redevelopment of Treasure Island.
- Minimize life-safety hazards from existing buildings by requiring structures to meet the FEMA-178 life-safety standard whenever feasible.

V. Infrastructure and other Base-Wide Improvements.

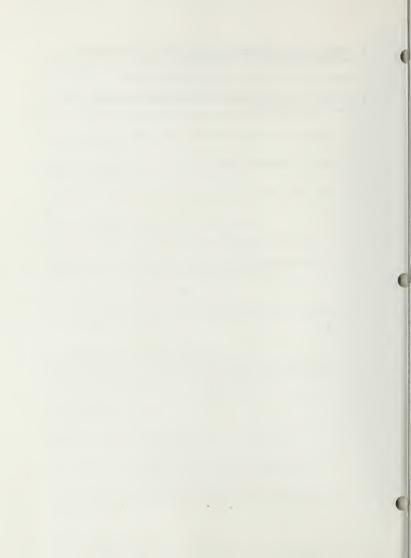
Cause new development to address seismic hazards.

- Phase-in seismic reinforcements to the perimeter of Base and the causeway and longterm utility and other infrastructure improvements in conjunction with long-term development.
- Utilize existing infrastructure to the extent feasible to foster economic development.
- Ensure that hazardous substances are adequately characterized and remediated.
- Maximize utilization of federal funds to complete remediation consistent with the Redevelopment Plan.
- Coordinate the phasing of clean-up with areas of anticipated interim reuse and longterm redevelopment.
- Cause new development to comply with applicable laws, including disability access laws.
- · Develop Base-wide accessibility programs and improvements.
- · Promote innovations in sustainable development and resource management.
- Incorporate environmentally sensitive building and street designs and undertake improvements that will promote energy conservation and efficiency.
- · Pursue using wet lands to treat storm-water run-off.
- Minimize noise and adverse visual impacts from the Bay Bridge, institutional users and other uses on Treasure Island.

IV. Community and Social Services; Public Safety.

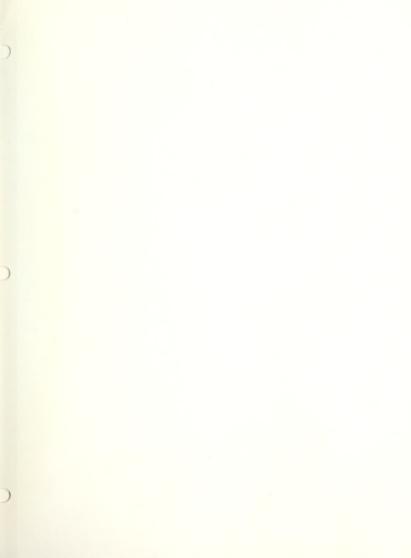
- To the extent consistent with long-term redevelopment and permitted by applicable laws, support the use of existing housing by a broad range of persons, reflecting the socioeconomic and cultural diversity of the San Francisco Bay Area.
- Provide community facilities and essential public services for Treasure Island's residents, visitors and businesses.
- Address homeless needs identified in San Francisco's Continuum of Care as part of a balanced overall plan in accord with federal base closure regulations.
- Include services for the homeless through a combination of programs, including transitional housing, job training and economic development opportunities.
- Grant job-ready homeless and economically disadvantaged persons access to employment opportunities. Individualize job-training programs to the specific needs of employers.

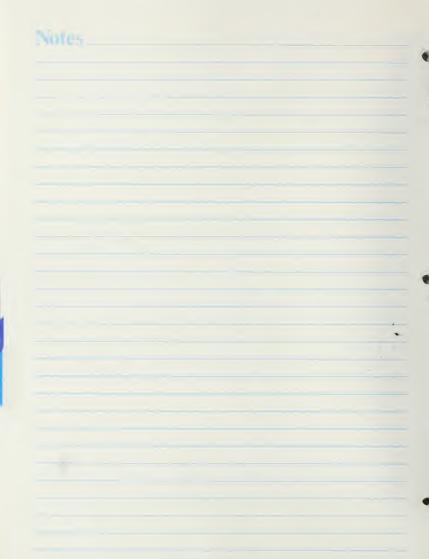
- Ensure the provisions of adequate public safety services such as police, fire, and emergency medical services for Treasure Island.
- · Prepare and refine emergency response plans for Treasure Island.
- Encourage collaborations between institutional users and service providers to reduce costs for facilities and services.











DRAFT Minutes of Meeting Treasure Island Development Authority March 13, 2002

Call to order 1:08 P.M.

Roll Call Present:

John Elberling (2:45 P.M. Departure)

William Fazande

Marcia Rosen

Claudine Cheng (3:00 P.M. Departure)

Susan Po-Rufino

Gerald Green (1:23 P.M. Arrival)

DOCUMENTS DEPT.

ADD - 5 DJZ

SAN FRANCISCO
PUBLIC I IBRAPY

Excused:

Light

Doug Wong

 Ms. Cheng clarifies that the minutes of February 2002 suggested a joint meeting with the Treasure Island/Yerba Buena Island Citizens Advisory Board (TI/YBI CAB) and the Authority, however Ms. Cheng only recommended that the Authority would be invited to join that TI/YBI CAB meeting of March 21, 2002.

The minutes were approved unanimously with a correction by Ms. Cheng.

- 3. London Breed, Commission Secretary states that seven letters were received regarding the draft Request for Proposal (RFP) and all were forwarded to members of the Board. Ms. Cheng States that she received letters as well and will draft a response for all letters. Ms. Cheng also notes that all letters are appreciated.
- 4. Ms. Cheng provides remarks regarding a meeting time change for the Authority.
- . General Public Comment: None
- Ongoing Business Directors and Introduction of New Business by members: None
- Resolution to approve amendment to the TI/YBI Citizens Advisory Board's bylaws, Article IV, Section 5 meeting attendance.

Marianne Connaroe, TIDA staff, states that currently the bylaws of the CAB state that you cannot miss more than four meetings in one calendar year or you are no longer a member of the board. The CAB would like to amend the by-laws where than can make up missed meetings by attending sub-committees or by appealing to the full CAB in writing.

Karen Knowles-Pierce, CAB Chair, explains what the current section in the bylaws state and then the change that the CAB is interested in making in the bylaws.

Rosen moved approval. Fazande seconded 6-0

 Resolution approving the budget of TIDA for fiscal year 2002-2003 and authorizing the Executive Director to submit the propose budget to the Mayor of the City of San Francisco for inclusion in the City's fiscal year 2002-2003 budget.

Stephen Proud, Deputy Director for TIDA, states that in fiscal year 2002 we had revenues that we just generate from leasing activities, not including leases to City Departments, and special events of about 6.2 million dollars. For the upcoming fiscal year we are projecting revenues from those same activities of 9.6 million dollars. Mr. Proud continues to discuss new items in the budget including Common Area Maintenance Charges that are due and owing to the US Navy.

Mr. Elberling asked are the numbers in the budget our current projections for fiscal year 02-03. Mr. Proud replies yes. Mr. Proud continues to mention that there still are around 150 units to be completed as part of the process and we will have to work through how the remaining capital expenses are paid back to the John Stewart Company once those units are delivered from the Navy. Since 80% of the units are complete that capitol account will not be significant as it has been in the past. We may just be able to pay in net proceeds as we go.

Mr. Elberling asks, with the current budget projections, are you assuming the remaining housing units will be available. Mr. Proud states that this revenue forecast does not assume they will be on-line during this fiscal year. Mr. Elberling asks about personnel staff for the Authority. Mr. Proud replies that there are no changes in personnel for the Authority this year. We had 12 position last year and 12 this year. Mr. Elberling requests a salary schedule for Authority.

Ms. Po-Rufino asks if there is a system in place for who gets billed by Fire Department. Mr. Proud states that the only separate billing by Fire Department is to Job Corps for false alarms. Generally, half of service calls go to Job Corps and Bay Bridge, so TIDA is arguing that those costs should be absorbed by Fire Dept. or General Fund since they are to non-revenue generating locations.

Ms. Rosen asks whether grants are specific and dedicated to purpose of grants, does extra money from grants revert to City or TIDA, how can this surplus relate to the search for recreation opportunities on TI, and does this budget address recreation goals. Mr. Proud states that capital expenses include completion of renovation work on the gymnasium and the removal of unsafe playground equipment. TIDA allocated about \$150,000 in budget for two recreation directors. Mr. Cohen adds that there is a trust overlay related to when revenues are generated from trust property. After offsetting and reimbursement for permitted City expenses, the surplus has to stay in the trust account and cannot go into the General Fund.

Ms. Rosen and Ms. Conroy both state the need for recreation services on TI.

PUBLIC COMMENT on Item #8

Sherry Williams, TIHDI, expresses her support for opening the gymnasium on Treasure Island. Ms. Williams also is supportive of the allocation in the budget for the deconstruction process.

Rosen moved approval. Fazande seconded. Approved 6-0.

Presentation of focused Request for Proposal for Primary Developer to be issued to Treasure Island Community Development.

Mr. Proud begins by discussing the financial aspect of the RFP which includes; 1. a feasibility plan and pro forma that lays out financial assumptions lease rates, development costs, capital costs; 2. Transaction structure and business offer, need to have understanding of how trust figures into transaction process rental structure; 3. Financing, expect project to be self-sufficient, need understanding of demonstrated need for public financing, equity financing, debt capital; 4. Guaranty for project performance on finance side, TICD needs to assure Authority of staying power to complete project.

Ms. Cheng asks for elaboration on public financing. Mr. Proud states that assumptions were build into project model. One was that revenues from project are reinvested into project. Another is there will be tax increment financing because it is a redevelopment project. Zero tax base right now because it is a federal land. Third is concept of revenue bond built on housing project since housing generates revenue, which would offset infrastructure costs. Also, other types of public financing available.

Ms Cheng asks if there are guidelines for how TICD can provide adequate guarantees. Mr. Cohen states that there are two issues. General: RFQ selects entity based on financial qualifications, usually single purpose LLC, thus parent corporation needs to guarantee finances. Specifically: element of report from consultants that TICD is adequately qualified. Currently we only have specifics from Lenar, but were able to conclude that TICD as a whole is qualified because Lenar by itself is financially qualified, regardless of other groups. Need to ask TICD to augment financial statements, or be able to assure that Lenar would have responsibility for total

finances. Ms. Rosen asks for clarification on pro forma. Sees anticipated involvement by Authority, wonders if this needs to be conveyed more strongly that there will be participation. Mr. Cohen and Mr. Proud agree that there will be participation.

Mr. Proud states that next section is evaluation criteria, means by which TIDA could look at proposal with specific criteria, including financial guarantee. Three sub-headings: 1. Project feasibility and timing, esp. market feasibility, capital, diversity of revenue generation, proposed public financing, 2. Regulatory feasibility and compliance, especially in anticipation of land transfer 3. Technical feasibility, issues related to utilities, seismic improvements, phasing and timing of project. Final section related to economic development and fiscal impact to City, need to be consistent with EDC application, proposal minimizes interim management responsibilities and expenses. These sections allow TIDA to take a subjective look at proposal to see if TICD meets criteria for TIDA to offer TICD an exclusive negotiating right.

Mr. Elberling asks if it is possible for two proposals in case Tidelands Trust swap is or is not approved since two scenarios might be dramatically different. Mr. Cohen states that without new housing that is unlikely. RFP requires developer to state why housing will reach financial feasibility. It does not, however, plan on asking them to create a proposal that they think will not work and then show why it will not work. Perhaps, they should require strong economic showing that all housing would achieve economic feasibility.

Mr. Elberling states that affordable housing section has no goals stated, would like to see specific goals stated.

Mr. Elberling states that affordable housing section has no goals stated, would like to see specific goals stated. Suggests 30% amount of affordable housing. Mr. Elberling adds that there is a strategic economic impact goal as to major use on island, i.e. bioscience at Mission Bay, Lucas Center at Presidio, the developer should generate this strategic goal. Received many letters about biological resources, many people feel strongly about this, would like to see it mentioned. Would also like to see ideas about how to keep impact change on Bay Bridge at zero compared to when base was open.

Mr. Green states that evaluation criteria should have greater weight added to it, including affordable housing over other possible parts of urban development. Mr. Cohen states that it is difficult with one development body to compare or give scores to different elements of RFP. Mr. Green states that it is important for TIDA to give direction to developer in terms of issues such as strategic goals and affordable housing. Mr. Cohen states that Authority is good forum for these issues to come to the floor and raise relative focus of these issues as the Board wishes.

Ms. Rosen states that it is tough to identify priorities with absolute thresholds that need to be met, and not just if areas meet criteria and threshold but how strong they are in meeting these needs. Mr. Green states that being able to explain how and why they came to decisions on issues is important in terms of explaining decisions on development, and to be able to explain if they met the goals.

Mr. Cohen states that every item in evaluation criteria is essential, and the way more essential ideas have floated to the top is as a result of these ideas being expressed more generally. Some areas, such as housing, will have stated minimums, and this is a way for the Board as a policy body to give specific areas more specific direction.

Ms. Rosen states that the financial and market feasibility is interrelated with the financial impact/economic development section and there should be some mention in this section of the necessity for positive impact on City for market feasibility, and that regulatory feasibility should be consistent with California Redevelopment Laws.

Ms. Cheng asks commissioners if they are ready to give priorities to certain items on RFP. Mr. Green states that he is willing to emphasize greater importance on certain items, asks whether the order of items on RFP corresponds to TIDAs ideas of significance on the items. Mr. Proud replies no.

Mr. Cohen states that all items seem independently important.

Ms. Rosen states that another possibility is to assume that the feasibility and timing and economic impact to the City are thresholds and within land use and urban design these items would be the ones where there are multiple substantive goals to achieve. Mr. Cohen states that Section A seems susceptible to needing to be changing the analysis of the Authority to a pass/fail system, where land use and urban design should be more quantitative. Economic development and financial impact is tough to put in a pass fail category because it

utilizes more of a sliding scale. Ms. Rosens suggestion to import a baseline of no negative impact on the City's fiscal health would be based on qualitative and pass/fail system.

Ms. Rosen states that this can be done without using a comparative point scale, suggests using ""meets it", "strongly meets it", etc. Asks if there are certain objectives that need to be met, even at the expense of other objectives. Mr. Cohen states that in the Land Use and Urban Design provides for facilities are that are essential to public services be non negotiable.

Mr. Green adds that there should be a wetlands and then to the extent feasible a larger wetland or smaller wetland. Mr. Cohen adds that it will be in the next draft. Mr. Proud has received input from the CAB on the submittal requirements and can now, with the input from TIDA incorporate them for Thursday's CAB meeting. Mr. Cohen adds that he and Mr. Proud will try to have a revised version that reflects all the comments heard so far. Including the affordable housing component.

PUBLIC COMMENT ITEM #9

Ruth Gravanis, TI Wetlands Project, appreciates hearing about concept of wetlands, and encourages TIDA to include wetlands in the RFP.

Sherry Williams, TIHDI, would like to assist the Authority in defining the affordable housing section of the RFP.

Eve Boch, ARC Ecology, submits written comments.

Mr. Proud states that he has not received comments from City departments or State agencies. Expecting comments first part of April. Ms. Cheng recommends sending them notice of our meeting next week, so that they understand that there is an opportunity for their comments to be heard by both entities.

Mr. Proud discusses the final section of the RFP - the timeline and the evaluation process. Consultant help is built into the budget. Recommends a panel of experts should look at urban design, land use and provide feedback on the quality of the proposal.

Mr. Proud lays out the next steps in the process. Upon approval of the final proposal, the Authority will enter into an exclusive negotiating agreement (ENA) with TICD. The ENA process leads to the negotiation of transaction documents and project approvals. The ENA will lay out next steps and the actions the developmental team would take if the proposal were accepted by the Authority board.

Ms. Cheng asks about section D and the make up of the review committee. Mr. Proud responds that the review committee would be made up of professionals in various disciplines such as urban design and land use planning or real estate consulting, economic analysis, engineering, geotechnical. Mr. Green asks if the selection process is built into the timeline. Mr. Proud says yes and it is consistent with the RFQ process and subject to our purchasing procedures.

Ms. Rosen says that if you had a proposal vs. the one where there was a different economic engine that resulted in different land uses, in a different size wetlands, then you would be able to evaluate them against each other. Mr. Cohen adds that there are two considerations, one its cost prohibitive to ask a developer to come up with two complete, separate development proposals. To the extent that we built in the flexibility on some elements for them to propose alternatives cuts against the specificity. The constant tension between flexibility and specificity.

PUBLIC COMMENT ITEM #9

Benard Dawson - Mechanical Engineer. Comments that the two step concept is sound.

10 Discussion of Future Agenda Items. None.

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NOTICE OF PASSIVE MEETING BY THE TRESURE ISLAND DEVELOPMENT AUTHORITY BOARD

Notice is hereby given that the Treasure Island Development Authority Board will hold a passive meeting on Thursday, March 21, 2002 at 6PM in Room 201 at City Hall, 1 Dr. Carlton B. Goodlett Place.

The Purpose of such meeting will be to allow members of the Treasure Island Development Authority Board, at the invitation of the Treasure Island/Yerba Buena Island Citizen's Advisory Board (TI/YBI CAB), to participate in and comment upon the TI/YBI CAB's consideration of the draft Request for Proposal for a Master Developer for Treasure and Yerba Buena Islands.

No action by the Treasure Island Development Authority Board will be taken at such passive meeting. The TI/YBI CAB may take action on such items as set forth in their agenda, which has been separately noticed and posted in accordance with the San Francisco Sunshine Ordinance



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XI

Adjourn



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Agenda

Treasure Island /Yerba Buena Island Citizens Advisory Board Thursday, March 21, 2002, 6:00 p.m.

PLEASE NOTE CHANGE IN MEETING LOCATION

Room 201 San Francisco City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA

I Roll Call П Approval of Minutes the CAB Meeting of February 21, 2001. (Action Item) H Report on the Treasure Island Development Authority meeting of March 13, 2002. (Information Item) IV. Further Discussion of the Draft Request for Proposal (RFP) for a primary developer for former naval station Treasure Island. (Discussion Item) V Report from the Chair of the Planning and Development Subcommittee, (Information Item) VI Authorization for the Planning and Development Subcommittee to prepare and summarize recommendations for any changes to the RFP to be forwarded to the full Treasure Island Development Authority Board prior to the next TIDA Board meeting on April 10, 2002. (Action Item) VII Report from the Chair of the Outreach Subcommittee. (Information Item) VIII Announcements from Board members. (Information Item) IX Future Agenda Items (Action Item) X. Public Comment



Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [San Francisco Administrative Code 16.520-16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, #701, San Francisco, CA 94102, or telephone (415) 554-9510, fax (415) 703-0121, or at their web site http://www.ci.sf.ca.us/ethics/

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance, [Chapter 67 of the San Francisco Administrative Code] or to report a violation of the ordinance, contact Donna Hall by mail at Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 224, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at Donna Hall@ci.sf.ca.us

Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library and on the City's website at http://www.ci.sf.ca.us

MEETING AGENDAS NOW AVAILABLE BY E-MAIL

If you would like to receive meeting agendas for the Treasure Island/Yerba Buena Island Citizens Advisory Board or the Treasure Island Development Authority by e-mail, rather than through U.S Postal Service mail, please send your name and e-mail address to TIDA@ci.sf.ca.us

Disability Access

The Treasure Island/Yerba Buena Island Citizens Advisory Board meets as the Treasure Island Job Corps Administration Building, 655 H Street, Building 442, on Treasure Island. This building is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Muni's #108 Treasure Island leaving from the Transbay Terminal at Mission and 2nd Streets in San Francisco is accessible. For more information about MUNI accessible services, call 923-6142.



TREASURE ISLAND WEBSITE

Check out the Treasure Island website at www.ci.sf.ca.us/treasureisland to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes. The Citizen's Advisory Board is in the process of developing a link to the website and will post agendas and minutes once the link has been established.

Regular meetings of the Treasure Island/Yerba Buena Island Citizens Advisory Board are held on the 3rd Thursday of each month at 6:00 p.m. 655 H Street, Building 442, 2nd Floor on Treasure Island. The next regular meeting is Thursday, April 18, 2002.



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TREASURE ISLAND DEVELOPMENT AUTHORITY REQUEST FOR PROPOSAL

FOR

FORMER NAVAL STATION TREASURE ISLAND

March 2002

Claudine Cheng, President

John Elberling

William Fazande

Gerald Green

Susan Po-Ruffino

Marcia Rosen

Doug Wong

Annemarie Conroy, Executive Director

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I. INTRODUCTION

On October 27, 2000, the Treasure Island Development Authority (the "Authority") issued a Request for Qualifications ("RFQ") for a Primary Developer for former Naval Station Treasure Island ("Treasure Island" or the "Base"). In response, the Authority received submittals from Navillus Associates and Treasure Island Community Development ("TICD").

Following an independent review of the two proposals, the Authority determined that only TICD met the evaluation criteria set forth in the RFQ and was thus deemed qualified to submit a proposal for the Authority's consideration. This document sets forth the guidelines and requirements for a proposal from TICD for the redevelopment of Treasure Island that is consistent with the development opportunity described in the RFQ. Those guidelines and requirements are based primarily on the goals and objectives set forth in the Draft Reuse Plan (summarized in Exhibit A to this RFP) and in information contained in the RFQ.

The Authority envisions that TICD's proposal will evolve through an iterative process with interaction between TICD and Authority staff, members of the Treasure Island/Yerba Buena Island Citizens Advisory Board (CAB), interested members of the public, and the Treasure Development Authority Board. Ultimately, TICD's proposal will be submitted to the Authority Board for consideration. If TICD's proposal is deemed acceptable, the Authority will enter into an Exclusive Negotiating Agreement ("ENA") with TICD. TICD's proposal will provide the basis for preparing transaction and development agreements for Treasure Island, but final terms and conditions will be subject to further negotiations during the term of the ENA, and ultimately approval by the TIDA Board and the City's Board of Supervisors.

If TICD's proposal is not deemed acceptable, the Authority may consider alternative means for proceeding with the redevelopment of Treasure Island.

TICD should refer to the RFQ document and relevant background materials already provided for pertinent information regarding the planning objectives for the site, the development opportunity, existing conditions and market information, special development considerations, and the anticipated role of the Primary Developer at Treasure Island.

II. PROPOSAL SUBMISSION REQUIREMENTS

In 1994, a Citizen's Reuse Committee ("CRC"), representing a broad spectrum of community interests, was formed to review reuse planning efforts regarding Treasure Island by the San Francisco Planning Department and the San Francisco Redevelopment Agency, and to make future recommendations. In July 1996, the Draft Reuse Plan (the "Reuse Plan") for Treasure Island Naval Station was unanimously endorsed by the Mayor, Board of Supervisors, Planning Commission and the Citizens Reuse Committee.

The Reuse Plan identifies certain goals and objectives for the redevelopment of Treasure Island (a summary is attached as Exhibit A). In general, the Reuse Plan is built around the concept of providing increased public access, recreational, and entertainment opportunities at Treasure Island, while creating jobs and providing sustainable economic opportunities for San Francisco. The Reuse Plan identified a number of broad land uses categories for the Treasure Island, including a mix of recreation and visitor-oriented entertainment uses, hotel and conference facilities, restaurants, parks, sportsfields, a marina, film production and housing. The Reuse Plan also contemplates the interim reuse of a number of existing buildings, including public facilities and housing, to maximize the public investments that have been made in them, provide public benefits, and help support the property's successful redevelopment.

Any proposal for redeveloping Treasure Island must be consistent with the goals and objectives set forth in the Reuse Plan and the Land Use Guidelines and Development Considerations described in the RFQ. For the Authority to effectively evaluate TICD's proposal against these criteria, TICD's proposal should address each of the following:

A. DEVELOPMENT CONCEPT

Land Uses and Development Program

The proposal must include a description (in narrative form) of TICD's approach to each type of land use and development proposed for Treasure Island, which may include the following uses: (1) hospitality, (2) entertainment, retail and other commercial uses, (3) cultural and educational, (4) residential, and (5) recreation and open space. The land use plan must correspond with financial proposal and business plan outlined in Section II C.

For each type of land use, the proposal must (i) include a graphic depiction that shows the location of the proposed use, (ii) describe the expected types of activities, projects and tenants, (iii) describe the anticipated total gross building square footage or unit count by phase and at the end of the full build-out and the total acreage devoted to such use, (iv) describe TICD's general approach to height, density and massing of buildings, and (v) describe the compatibility of the use with adjoining/existing uses on

both a short-term and long-term basis (e.g., Job Corps, Coast Guard, Marina, etc.).

Phasing Plan

TICD's proposal must include a preliminary phasing plan that depicts graphically and describes in narrative form the rational behind the phasing of the development program, including a discussion of:

- ✓ Phasing of overall land use program;
- The phasing of all on- and off-island transportation improvements, including a graphic depiction of the entire transportation network (see Item 4 below);
- The phasing of infrastructure, seismic & geotechnical improvements, and other elements of horizontal land development (see Items 5 & 6 below), including likely impacts from the Bay Bridge seismic strengthening project;
- ✓ The phasing of community facilities, including open space and recreation elements (see Item 5 below);
- ✓ The phasing of vertical development elements, with an emphasis on the balance over time between commercial, neighborhood-serving retail, and residential uses;
- How phasing may be affected by the timing and manner of environmental remediation at Treasure Island:
- How the phasing plan ensures the compatibility of uses throughout the development process, including how existing uses and lessees (e.g., existing residential tenants and the Job Corps) will be incorporated into the project on an interim and long-term basis.

The Phasing Plan should include a description of TICD's overall approach to the project that outlines the role and responsibility of TICD in the development process. For example, the proposal should describe if TICD expects to simply provide the backbone infrastructure to a large parcel that would be disposed of to a third-party developer, or whether TICD expects to build in-tract infrastructure and/or conduct the final vertical development at the site, or a combination of both.

In addition, the proposal must include a development schedule for predevelopment and development activities, that indicates (in number of months) the estimated time each portion of the project is expected to take and the sequence of development activities. The development schedule will serve as the basis for the Schedule of Performance, which will be attached to the Exclusive Negotiating Agreement if TICD is selected as the Master Developer for Treasure Island, and should include specific milestones for the term of the ENA.

3. Housing

a. General Conditions

If housing is contemplated as part of the development program for Treasure Island, the proposal must include a discussion of the following:

- What is the expected mix of ownership and rental housing and levels of affordability;
- How the housing program is consistent with the provisions set forth in the Treasure Island Homeless Development Initiative ("TIHDI") agreement;
- How the housing program is consistent with the goals and policies set forth in the Reuse Plan, including the acreage dedicated to housing and the total unit count;
- The consistency of the housing program with the provisions of the No-Cost Economic Development Conveyance transfer of property from the Navy (as described in the RFQ);
- How the housing program will address the existing preference categories for rental units;
- Consistency of the housing program with the requirements of California Redevelopment Law; and
- The proposed Trust Exchange that would allow the housing program to comply with Tidelands Trust and Bay Plan requirements.

b. Affordability

The Authority is committed to providing a full range of affordable housing options at Treasure Island. Thus, TICD's proposal must also demonstrate how TICD will meet or exceed the following minimum requirements:

- Compliance with the requirements of the TIHDI Agreement regarding the reuse of existing housing;
- Inclusion of at least 15% "affordable" units (as defined below) in all new housing development (the "Inclusionary Housing");

- Compliance with the requirement in the TIHDI Agreement that TIHDI receive conveyance of land suitable for the construction of affordable housing at a rate in direct proportion to new market rate housing of one acre for every new 1,000 units (the "TIHDI Set-Aside Units");
- ✓ That at any point in time, 30% of all housing units inclusive of the TIHDI units-must be affordable.
- If together the TIHDI Set-Aside Units and the Inclusionary Units do not account for 30% of the total housing, TICD shall make available to the Authority improved land suitable for the construction of such additional housing units as is necessary to achieve such 30% minimum
- ✓ Other than for TIHDI units, "affordable" for these purposes shall mean that for-sale units will be priced to be affordable to residents earning 100 percent (100%) of the applicable area-wide median income ("AMI") and rental units will be priced at rental rates no more than the maximum gross rent published by HUD for households earning 60% of AMI, less the utility allowance calculated pursuant to schedules and procedures established by the San Francisco Hosing Authority.
- Affordable units will be price and income restricted until the earlier of (a) 75 years from the date of issuance of the Certificate of Occupancy; or (b) such shorter period of time as required by the terms of any first mortgage financing for the purchaser, but in no event less than 40 years. All Affordable Units will have recorded restrictions, a second deed of trust securing the Authority's interest, and a right of first refusal to purchase or assign the right to purchase the Affordable Units upon resale benefiting the Authority.
- The Inclusionary Units must be phased in proportionately at the same pace as market rate units.
- Affordable units, including the Inclusionary Units, the TIHDI Set-Aside Units and any other affordable units, must be evenly distributed throughout the housing area. The Inclusionary Units shall be equivalent in bedroom count, size, quality and finish as market rate units.
- Overall, the affordable housing must feature a mix of rental and ownership housing consistent with applicable Citywide policies.
- Compliance with any other applicable laws regarding affordable housing, including, without limitation, to the extent applicable, California Redevelopment law.

4. Tidelands Trust.

It is important to note the applicability of the Tidelands Trust and the rules governing No-Cost Economic Development Conveyances (particularly as they relate to any plans for new housing). The principles of public uses underlying the Tidelands Trust were among the most important factors shaping the Reuse Plan. Accordingly, land uses must be consistent with the Trust and the development plan must further Trust purposes. The proposal must also describe how development will expand public access to the shoreline and enhance views of the Bay and how the development program responds to the requirements of the Bay Plan as administered by the Bay Conservation and Development Commission ("BCDC").

If new housing is contemplated, either to replace existing units, add new units, or some combination of both, it could be necessary to lift the Tidelands Trust from those areas of Treasure Island proper where new units are to be constructed. In general, removing the Tidelands Trust designation would likely involve a "exchange" or "swap" of the Trust designation from interior land not useful to the Trust on Treasure Island proper onto portions of Yerba Buena Island. A summary of the key principles governing a Tidelands Trust exchange at Treasure Island is provided in the Appendix to the RFQ. Among other things, the proposal should describe any proposed exchange of the Tidelands Trust, how such an exchange meets the requirements described in the RFQ, and any actions taken to date related to a Trust Exchange. The proposal should include a graphic depiction of the proposed configuration of any proposed Trust Exchange and describe the number of acres included from "sending" and "receiving" sites.

5. Access, Transportation, Circulation and Parking

Issues of access and transportation are among the most critical considerations for the development of Treasure Island. Therefore, the proposal must include a detailed transportation plan that maximizes mobility for area residents, employees, and visitors to the island, helps guide development, improves the environment, and fosters connections between Treasure Island, San Francisco and East Bay communities. More specifically, the proposal must contain:

- A description of the "On-Island" transportation network including vehicular and pedestrian circulation patterns, bicycle and pedestrian systems that emphasize safe travel routes, traffic-calming measures, intra-Island transit services, and the development of alternative fuel and/or electric charging stations.
- A plan for access to and from Treasure Island, San Francisco and East Bay Communities that utilizes transit modes other than autos and is

integrated with other transit planning in and around the Bay (e.g., the Water Transit Authority). Specifically, the proposal must discuss how bus and shuttle services will be provided and how water transit service (ferries and water taxis) will be integrated into the transportation network as a means of access to the Island. The proposal should include a cost analysis of alternative transit modes, the expected ridership levels, and anticipated transit revenues and necessary subsidies (if any). Based on this analysis, TICD should articulate their role in providing alternative transit service to and from the Island. A Transportation Demand Management (TDM) program that limits impacts from automobile traffic on the both the Island and the Bay Bridge. Measures that may be implemented as part of the TDM include:

- ✓ Employer incentives to reduce vehicular demand;
- ✓ The establishment of an on-island employee transportation coordinator;
- The provision of facilities for bicycles in all new uses and on all transit modes;
- ✓ Organized carpools/vanpools and car sharing programs;
- A land use program that includes design elements of transit oriented development; and
- A comprehensive parking program that utilizes shared parking arrangements, discourages free parking, and limits on-street parking. The proposal should indicate the total number of offstreet parking spaces proposed for the Island.

The TDM should also assess the feasibility and costs of creating and maintaining transit infrastructure systems that would limit auto traffic to levels that existed prior to closure, when the Base was fully operational by the Navy.

6. Infrastructure Rehabilitation/Replacement Program

One of the most common issues associated with military base conversion involves the transfer of infrastructure systems that have been developed and maintained by the military to standards that are different than those utilized by civilian agencies. At Naval Station Treasure Island, it is anticipated that most of the core utility systems and backbone infrastructure will need to be replaced or upgraded. Accordingly, the proposal must include a plan for proposed infrastructure improvements for each major utility system and a phasing program for the improvements

through build-out. The infrastructure plan should identify those improvements, which will be made by TICD, and those improvements that will be made by other developers/agencies (i.e., backbone vis-à-vis intract). It is expected that new utility/infrastructure design will result in lower operational costs to the City/Authority and that the system design will result in provide increased safety for utility workers.

Seismic and Geotechnical Conditions

Treasure Island proper (excluding most of Yerba Buena) was created using non-engineered fill and as result, is expected to perform poorly during a major seismic event. In the event of an earthquake of magnitude 7 or greater, there is a significant risk that existing buildings and other structures and improvements located on Treasure Island, without further improvements, may fail structurally and collapse. Of particular concern are the perimeter dikes that surround Treasure Island. In the event of a seismic occurrence, these dikes may experience structural failure resulting in severe damage to the Island.

Although Treasure Island fared well in the 1989 Loma Prieta earthquake, long-term development of Treasure Island will require careful planning to address seismic conditions. While efficiencies may be gained through improving large areas of Treasure Island at the same time, the entire land area of Treasure Island does not necessarily need to be improved in one single step and all at once. It may be possible to phase improvements to allow incremental development to occur over time and, depending on the nature of the proposed long-term uses, some of the areas may require less substantial seismic improvements. However, the initial phase of seismic improvements should to the greatest extent possible improve the health and safety of the Entire Island, including residents in the existing housing.

As noted above, the proposal must indicate TICD's approach to seismic conditions at Treasure Island to improve public safety and the timing and phasing of those improvements. The proposal should identify the standards and construction techniques that will be used, and should differentiate between improvements to existing buildings, improvements to the perimeter dike and causeway, and improvements related to the construction of new buildings/facilities.

Demolition and Deconstruction

TICD must identify buildings they intend to demolish/deconstruct as part of the development program. TICD shall describe the program for deconstruction, demolition and material reuse, including community participation in such program. The deconstruction program shall address

State law requiring that the City achieve significant reduction in its landfill waste.

Community Benefits/Services

Creating a new neighborhood from "scratch" requires careful consideration and planning to build a social infrastructure that benefits area residents, businesses, and employees. To that end, the proposal must set forth a plan for proposed community facilities and describe how appropriate community services and facilities will be maintained during all phases of development. Uses that should be included in the plan include, but are not limited to:

- ✓ Public Safety Facilities
- ✓ Education and Childcare Facilities
- ✓ Healthcare Services
- ✓ Community Meeting and Cultural Facilities
- ✓ Parks and Recreation Facilities
- ✓ Open Space and Habitat Preservation
- ✓ Space for Community Based and Non-Profit Organizations

Urban Design/Historic Preservation

The redevelopment of Treasure Island requires a thorough understanding of the context within which the project will take place. While many of the buildings and facilities may be demolished/deconstructed to create functional and desirable development sites, there are several existing uses and historic and cultural resources that must be woven into the built environment. As Treasure Island embarks on its "third life", a conscious and purposeful effort will be required to change the character of the facility from a post war military installation to a destination that is an integral part of the City's urban fabric.

Design considerations include the restoration and creation of public spaces and amenities, heightening the sense of immediacy between the Island and the City, designing new facilities and structures that compliment and unify disparate functional and architectural elements, and the preservation of structures and places of significant historic interest (as listed on Exhibit B) according to the Secretary of Interior's Standards for Historic Rehabilitation

The proposal must describe TICD's overall approach to urban design for the project and for individual phases. The proposal should include a discussion of TICD's approach to cultural and historic resources and how the program meets the basic tenets of sustainable design and smart growth (see Item 10 below). To assist in the evaluation, the proposal should include perspectives, graphics and /or other images that conceptually illustrate the proposed urban design elements (e.g., building types, initial building character and siting, key identity elements amenities and other features, etc.) and are keyed to the development plan.

11. Sustainable Design

Future development of Treasure Island represents an outstanding opportunity to incorporate the best practices of sustainable design and smart growth into a land use and urban design program. It is the Authority's goal that Treasure Island/Yerba Buena Island become a model of sustainability and that position is supported by resolutions adopted by the San Francisco Environment Commission and the San Francisco Board of Supervisors. To that end, the proposal from TICD must include a sustainability plan that addresses the various elements of the City's Sustainability Plan, including, but not limited to, the following:

- The development of resource efficient or "green" buildings and facilities, utilizing standards such as the Leadership in Energy and Environmental Design (LEED) published by the U.S. Green Building Council;
- Solid waste management, including reuse and recycling of building materials from demolition/deconstruction activities;
- The use of clean, alternative-fuel transit to and from the Island, including ferries, buses, and shuttles;
- Expansion and preservation of sensitive habitat areas and open space;
- Best management practices for water and energy conservation; and
- A description of how the proposed improvements to the various infrastructure systems will incorporate sustainable design elements and best available technologies to minimize impacts on, and maximize benefits to the environment:
- Incorporation of a constructed wetlands for water treatment (storm and/or wastewater), wildlife habitat and environmental education;

B. FINANCIAL PROPOSAL

As part of its submittal, TICD must include a financial proposal that sets forth principal business terms, which will serve as the basis for negotiating a term sheet and subsequent final transaction documents. The submittal must include the following

Feasibility Plan and ProForma(s)

The submittal must include a complete ProForma of the anticipated revenues and expenses of the proposed project, including

- A clear description of financial assumptions and annual and cumulative cash flow projections for the full build-out period (by phase and product type), including pre-development phases and interim uses:
- A range of expected lease rates for commercial product type, a range of expected rental rates and sales prices (if applicable) for housing, and preliminary market research to support the ProForma assumptions;
- A preliminary budget of development costs, specifying, among other items: pre-development costs; applicable development fees and exactions under the City's Planning Code and other ordinances; estimated seismic and infrastructure costs; and any TICD overhead, fees and contingencies;
- Project returns and the TICD's return requirements, hurdle rates or threshold rates of return.
- A financing plan for capital costs from inception to buildout (see Section II.C.3 below); and
- A preliminary plan to finance maintenance and repair of public infrastructure, open space and community and cultural facilities and the provision of new public services required as a result of development

The Authority recognizes that the ProForma will reflect projections only, based on then current information. The Authority further recognizes that the projections as to early phases of the project will be more reliable than projections as to later phases.

Transaction Structure and Business Offer

The Authority expects to receive title to Treasure Island from the Navy as parcels are successfully remediated. The Authority expects the Navy will convey the Hotel Parcel, the South Waterfront Parcel, the Treasure Island Core Parcel, the Marina Parcel and the Yerba Buena Island Parcel (as shown on the Attachment B), following certification of the EIS/EIR and the issuance of a Record of Decision (ROD) by the Navy. The remaining parcels will be conveyed as soon as the Navy completes all required environmental remediation. In addition, as described in Section II.D (below), the Authority expects to enter into a Lease in Furtherance of

Conveyance (LIFOC) for the those portions of the Base not initially transferred in fee.

As noted earlier, Treasure Island proper (and small portions of YBI) are subject the Tidelands Trust which prohibits the conveyance of trust property to private owners. However, such property can be leased for trust uses at fair market value under a long-term ground lease, and properties unencumbered by the Trust can be transferred in fee. Based on the land use program set forth in the proposal (including any proposed Trust Exchange), TICD should indicate which land it expects will be conveyed in fee and which land would be conveyed by lease.

For leased property, TICD should propose a rental structure including base and percentage rent. For property to be conveyed in fee, TICD should describe how TIDA will be compensated for the land, including whether land value would be paid as an up front purchase price with a back-end participation in project revenues. TICD should also project City's share of project revenues under both lease and fee transaction structures.

Financing

It is the expectation of the City and the Authority that the proposed project be financially self-sufficient. To improve the project's feasibility, the Authority may (i) allow leasehold financing of its property on commercially reasonable terms, (ii) allow project revenues, including revenues from housing and other interim leases, to be reinvested in the project, and (iii) to the extent of demonstrated need, assist with public financing, such as tax increment bonds and revenue bonds (secured by revenue from the housing and other appropriate sources). However, the City does not intend to spend General Fund dollars for property management, infrastructure improvements, or other capital needs associated with redeveloping the Base.

TICD's submittal must describe its plans for obtaining the equity capital and debt financing necessary to undertake the development, including rates of return these sources are likely to require. Subject to the objectives described in the preceding paragraph, TICD should specify any proposed types of public financing and the purposes for which the proceeds of any such public financing will be used.

Guaranty or Other Financial Assurances

TICD must provide adequate means to assure the Authority of sufficient financial wherewithal and commitment to fulfill its financial, indemnification and other performance obligations. TICD has created a special purpose limited liability company for the purpose of submitting its

qualifications under the RFQ and ultimately for the purposes of acquiring, managing and redeveloping Treasure Island. However, it is not clear whether the members of TICD are jointly and severably liable for the obligations of TICD and only one of TICD's constituent members – Lennar- provided adequate financial information during the RFQ phase.

As a result, TICD must describe how TICD is organized and the extent to which the various members of TICD will be responsible for TICD's obligations. TICD must also explain how it intends to provide the Authority with adequate assurances of its continued financial capabilities even if one or more constituent members withdraws from TICD. If, for example, either because of the organizational structure of TICD, or because of TICD's failure to provide adequate financial background information regarding each of its members, the Authority must rely principally on the financial capabilities of one or more of TICD's constituent members, such member(s) must agree as part of TICD's proposal to fully guaranty the obligations of TICD, through guaranties from parent entities reasonably acceptable to the Authority, performance deposits, and/or surety bonds, as appropriate given the nature of the guaranteed obligations. In its proposal, TICD must identify with specificity the precise corporate entities that will be guaranteeing TICD's obligations.

C. MANAGEMENT OF INTERIM USES

As part of the Transaction Documents, the Authority intends to sublease to TICD all of the unconveyed Parcels of the Base that are subject to the LIFOC until those Parcels are conveyed by the Navy. The Authority expects to transfer to TICD all of the protection, maintenance and other responsibilities required by the Navy under the LIFOC. The submittal must describe the expected interim uses and how TICD proposes to manage those interim uses on the leased premises in relation to the redevelopment of the conveyed Parcels.

D. COMMUNITY EMPLOYMENT/ECONOMIC DEVELOPMENT

The submittal must include a narrative description of permanent and construction jobs, including a description of job training, education and hiring programs consistent with the goals and objectives set forth above and with applicable Authority and City requirements (including First Source Hiring, the TIHDI Job Broker Program, and Equal Opportunity Programs), and of projected numbers and types of jobs by phase and at the full build-out of the project. The proposal must also describe the types of economic development opportunities that will be made available to TIHDI consistent with the provisions of the TIHDI agreement.

E. COMMUNITY OUTREACH PROGRAM

The submittal must include a description of a proposed Community Outreach Program, including a description of the proposed approach to achieving community consensus for the development concept, outreach to the Citizens Advisory Board and other community-based organizations and the relationship of the Regulatory Approvals and Transaction Documents to each step in the community consensus-building process.

F. DEVELOPMENT TEAM

TICD shall augment earlier information that was provided in response to the RFQ by furnishing a description of (i) any new or changed members of the development team, including all key individuals at every level, (ii) the organizational structure of TICD and the decision making process among team members and within the LLC, (iii) the development responsibilities of each primary entity, (iv) all consultants under contract for pre-development and development activities, and (v) a list of contacts, addresses and phone numbers for all members of the development team.

III. EVALUATION CRITERIA:

The Authority shall determine, in its sole and absolute discretion, whether TICD's proposal sufficiently furthers the goals and objectives of the Reuse Plan to justify proceeding to exclusive negotiations with TICD at this time. In making that determination, the Authority shall consider, among other things, the following:

A. Project Feasibility and Timing

These criteria consider the feasibility of TICD's proposed Development Concept and the likely time frames for completion of the Project. Assessment of these criteria will include the following:

- Financial and Market Feasibility. Factors include, (i) financial capacity and adequacy of working capital of the respondent to cover initial capital expenditures and operating costs through development, (ii) diversity of revenue generating uses, (iii) reasonableness of market assumptions underlying the Pro-Forma, (iv) reasonableness of TICD's expected returns, (v) feasibility of proposed public financing mechanisms, (vi) reasonableness of TICD's cost estimates, (vii) appropriateness of the proposed transaction structure, and (viii) adequacy of proposed financial assurances.
- Regulatory Feasibility. Factors include consistency of the respondent's Development Concept with (i) Tidelands Trust considerations and/or reasonableness of any proposed Tidelands Trust exchanges, (ii) applicable BCDC Bay Plan designations, (iii) federal base closure requirements of an Economic Development Conveyance, including job generation and inclusion of new housing only to the extent necessary to achieve "financial feasibility", (iv) the pending environmental review of the Reuse Plan under NEPA and CEQA, (v) the provisions of California Redevelopment Law, and (vi) other regulatory requirements applicable to the reuse and redevelopment, such as those administered by the Regional Water Quality Control Board, the Army Corps of Engineers, the Department of Toxics Substance Control, etc.
- <u>Technical Feasibility.</u> Factors include the extent to which TICD's Development
 Concept addresses the issues related to (i) new infrastructure and utility systems,
 including electric, gas, telecommunications, potable water, storm-water, and
 wastewater treatment systems, (ii) geotechnical and seismic improvements to the
 causeway, perimeter dike, and other related areas needed to reduce life-safety risks,
 (iii) redesign and construction of arterial roadways and streetscapes, (iv) access
 improvements to and from the Island, and (iv) environmental remediation of the Base
 by the Navy.
- <u>Phasing/Timing</u>. Factors include (i) the timeline for implementation of the
 Development Concept, including how quickly the respondent's Development
 Concept will cause seismic strengthening of key areas of the Base, including the
 causeway and perimeter dikes, (ii) ability to implement the Development Concept
 with minimal interruption to existing uses and occupants, including residents, (iii)
 overall viability of and schedule for implementing respondent's Development

Concept, including the use of incremental or phased development to maximize land value.

B Land Use Plan/Urban Design

These criteria consider whether TICD's Development Concept meets the land use objectives set forth in the Reuse Plan. Assessment will include the following:

- Creates a broad mix of mutually supportive, publicly oriented uses, with an emphasis
 on recreation, cultural, educational and entertainment uses that appeal to local and
 regional residents and tourists.
- Provides for land uses that are compatible with each other and existing uses throughout all phases of development.
- Preserves structures and places of historic significance and architectural interest.
- Affordable housing units comprise 30% of total housing inventory and units are available to all income ranges and the housing program satisfies the provisions set forth in the TIHDI agreement.
- Improves public access to the bay, including increased waterfront recreational
 opportunities and uses that enliven and improve access to the water's edge.
- Improves the appearance and identity of the Island by heightening its visibility, prominence and sense of immediacy with the rest of the City, and orienting development to take advantage of the island setting, outstanding views, and close proximity to downtown San Francisco.
- Maximizes public amenities such as parks and open space for passive and active recreational use and creates a continuous open corridor along the shoreline edge.
 Protects sensitive habitat areas from development.
- Protects hillside and shoreline open space on Yerba Buena Island and focuses open space on the water and other natural features to provide a sense of nature and visual contrast with developed portions of the Island.
- Protects important biological resources and maintains and improve the quality of the surrounding natural environment, including, the creation of wetlands and open space.
- Minimizes potential environmental impacts related to development through the use of "green building" practices. Utilizes best practices for sustainable development and resource management throughout the life of the Project. Addresses environmental factors such as wind and noise in the site, building, and street design. Promotes energy conservation and efficiency.
- Minimizes automobile traffic on the Island and the Bay Bridge and provides for clean, alternative transit modes as the primary means of access, including creating viable and attractive ferry and/or other water transit services.

- Create a safe, attractive, pedestrian friendly multi-modal system of streets, walkways and bike paths. Developer innovative modes of intra-island transportation.
- Provides facilities for essential public services and community activities, such as fire and police protection, an elementary school, park and recreation facilities, community meeting space, and opportunities for community based an non-profit organizations.

Economic Development/Financial Impacts on City.

These criteria weigh the overall fiscal impacts of the Development Concept on the City and the Authority. Assessment will include the following:

- The net fiscal impact of TICD's proposal on the City, including (i) projected new lease, land sale and tax revenues to the Authority or the City and (ii) the extent to which development requires public funding.
- The extent to which respondent's Development Concept will enable the Authority to realize the job generation goals outlined in the EDC application to the Navy and contribute to the economic vitality of the City and the region.
- The extent to which the development proposal contains elements of, and further strengthens, key strategic sectors of the local economy.
- Proposed terms of Base Rent and City's Participation in surplus revenue, including the percentages, triggering events and threshold (hurdle rate) for any such Authority participation.
- The likelihood that the Authority will receive an appropriate return for over the life of the Project from leases, revenue participation, land sales, and other redevelopment activities.
- The extent to which TICD minimizes the Authority's interim asset management costs by accepting such operating responsibilities and costs.
- The extent to which TICD minimizes the Authority's legal and financial liabilities associated with environmental remediation.
- The extent to which TICD's proposal demonstrates a commitment to create or retain jobs for San Francisco residents, especially economically disadvantaged persons, and to provide minority and women-owned business enterprises with an equal opportunity to compete for and participate in project development and operations
- The extent to which respondent's proposal demonstrates TICD's commitment to work
 cooperatively with the TIHDI Job Broker Program and the scope and quality of
 economic development opportunities for TIHDI member organizations.

IV. TIMELINE AND EVALUATION PROCESS

A. <u>Schedule</u>. The Authority intends to proceed with its evaluation of TICD's proposal as follows:

1) Pre-Submittal Conference/Q&A	April, 2002
2) Initial Responses to RFPs due	June, 2002
3) Proposal Presentations at Authority/CAB Workshops	July, 2002
4) Final Revised Proposal Due	August, 2002
5) Evaluation of Proposal by CAB and Authority	September, 2002
6) If Proposal is Approved by Authority, Enter into ENA	September, 2002

- B <u>Submittal</u>. TICD must deliver one readily reproducible complete set of its initial response and at least 35 copies to the Authority no later than 5 p.m. on _____. Upon receipt, Authority staff will review the submittal to insure the response address all required elements of the RFP.
- C <u>Evaluation of Initial Proposal by Authority and CAB</u>. The Authority intends to hold a special workshop at which TICD will be given the opportunity to make a brief presentation regarding its initial proposal, and then answer questions from members of the Authority and/or representatives of the Review Committee. It also expected that TICD would be asked to make a separate presentation of their proposal to the Treasure Island/Yerba Buena Island Citizen's Advisory Board ("CAB") and members of the public. Subsequent to those presentations, TICD will be given an opportunity to revise its proposal to further address issues and concerns raised at those meetings.
- D. <u>Evaluation of Final Proposal</u>. A consultant based Review Committee, with expertise in relevant subject areas (planning and urban design, real estate economics, engineering, etc.), established by the Authority's Executive Director will review TICD's final proposal and make recommendations to the Authority Board as to whether TICD's final proposal meets the evaluation criteria described in Section III of this RFP. In arriving at its recommendations, the Review Committee will evaluate the contents of TICD's proposal and may conduct follow-up interviews. The Review Committee may also consider in its evaluation TICD's presentations to the Authority and the CAB.

In addition to the Review Committee, the CAB will also review the response to the RFP and make its own recommendations to the Authority Board as to whether the response meets the criteria set forth in the RFP.

E. Recommendation to Authority. The recommendations of the Review Committee and the CAB will be presented to the Authority for its consideration at a public hearing. The Authority Board will make the final decision as to whether to proceed with TICD or take such other action as the Authority may decide in its sole and absolute discretion.

- Exclusive Negotiating Agreement. If the Authority, based on TICD's final proposal, elects to proceed with TICD as a potential Master Developer for Treasure Island, the Authority will enter into an Exclusive Negotiations Agreement ("ENA") with the TICD, pursuant to which TICD will have the exclusive right to develop the Project for the term of the ENA. Under the ENA, TICD will be required to bear all costs of environmental review and any other regulatory approvals required for the Authority to enter into the Transaction Documents, including, without limitation, any building permit, planning application or impact fees assessed by the City or any other governmental agency with jurisdiction. Other agencies which may have regulatory jurisdiction over the Project include the City's Planning Department (which among other duties is responsible for environmental review, makes General Plan consistency findings, and determines compliance with San Francisco Planning Code provisions implementing the Coastal Zone Management Act) and Arts Commission, the State Lands Commission, the California Environmental Protection Agency (including DTSC and the RWQB), the Bay Conservation Development Corporation (BCDC), the California Coastal Authority, the Army Corps of Engineers and the State Department of Fish and Game. The Authority will cooperate with the successful respondent's efforts in obtaining such regulatory approvals. The ENA will also require TICD to reimburse the Authority for all of its transaction costs related to the preparation and negotiation of the Transaction Documents, including the Authority's consultant and legal costs. Based on projects of comparable size and complexity, TICD should expect those costs to equal approximately \$1.5 to \$2.5 million per year until final approval of the transaction documents.
- G. Negotiate Transaction Documents and Obtain Project Approvals. Pursuant to a specific schedule of performance set forth in the ENA, the Authority and the Developer will negotiate and prepare any deeds, leases, development agreements and other documents related to the development of the Project (together, the "Transaction Documents"). After the completion of all required environmental review under California Environmental Quality Act ("CEQA") and any regulatory approvals required as a condition of such approvals, the Transaction Documents will be presented to the Authority, the City's Board of Supervisors and the Mayor, for approval in their respective sole and absolute discretion. Prior to such approvals, the Authority will retain the sole and absolute discretion to (i) make modifications to the Transaction Documents or the Project necessary to mitigate significant environmental impacts, or (ii) elect not to proceed with the Transaction Documents or the Project.

V. TERMS AND CONDITIONS.

- Proposal Execution. TICD's proposal must be signed in ink, with TICD's address. Evidence of the legal status of TICD, whether individual, partnership, corporation, Limited Liability Company, county or municipality shall also be provided. Corporation shall execute the proposal by its duly authorized officers in accordance with its corporate bylaws and shall list the State in which it is incorporated. A partnership shall give full names and addresses of all partners and shall list the State in which it is organized and shall execute the proposal by its duly authorized partners in accordance with the partnership agreement. A limited liability company shall give full names and addresses of all members and shall list the State in which it is organized and shall execute the proposal by its duly authorized members or managers in accordance with its operating agreement. Partnerships, limited liability companies, and individuals shall be required to state the names of all persons involved in the proposal. The place of residence of each partner, member, or individual, or the office address in case of a firm or company, including state, zip code and telephone number, shall be given after each name. If TICD is formed as a joint venture consisting of a combination of any of the above entities, each joint venturer shall execute the proposal. Anyone signing a proposal as an agent of a firm or entity shall submit legal evidence of his or her authority to do so with the proposal.
- B <u>Proposal Security Deposit</u>. In addition to the One Hundred Thousand Dollar (\$100,0000) deposit submitted with the RFQ, TICD must submit with its final proposal an additional proposal security deposit in the form of a forfeiture-type bond, a check certified by a responsible bank, or a cashier's check payable to the City and County of San Francisco in the amount of One Hundred Thousand Dollars (\$100,000). If the Authority does not elect to proceed to exclusive negotiations with TICD, its deposits will be returned without interest. If the Authority elects to proceed with exclusive negotiations with TICD, upon execution of the ENA (as described below) TICD will be required to increase its deposit by an additional One Hundred and Fifty Thousand Dollars (\$150,000), to a total of Three Hundred and Fifty Thousand Dollars (\$350,000), at which time the deposit would serve as the first advance to the Authority for its transaction costs under the ENA.
- C. Grounds for Rejection. Any false, incomplete, or unresponsive statements in connection with TICD's proposal may be cause for its rejection at the City's discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the Authority and its judgment shall be final.
- D. Invitation to Submit Proposals, No Obligations by City to Contract. This RFP is only an invitation to submit a proposal, and does not commit the Authority or the City in any way to enter into the Transaction Documents or to proceed with the RFP or the proposed Project. In addition, the issuance of this RFP does not obligate the Authority or the City to pay any costs incurred by TICD in connection with (i) the preparation of a response to this RFP, (ii) any supplements or modifications of this RFP or (iii) negotiations with the Authority or the City or other party arising out of or relating to this

- RFP. All costs incurred in the preparation and presentation of TICD's proposal in response to this RFP shall be borne solely by TICD.
- E. <u>Reservation of Rights by City</u>. The Authority expressly reserves the right at any time and from time to time, and for its own convenience, to do any or all of the following:
 - Waive or correct any immaterial defect or technical error in any response, proposal, or proposal procedure, as part of the RFP or any subsequent negotiation process.
 - 2. Reject any and all proposals, without indicating any reason for such rejection.
 - Request that certain or all respondents to this RFP supplement or modify all or certain aspects of the information or proposals submitted.
 - 4. Reissue an RFP.
 - Modify the selection procedure, the scope of the proposed Project or the required responses.
 - Extend deadlines for accepting responses, requesting amendments to responses after expiration of deadlines, or negotiating or approving final agreements.
- F. <u>TICD Certification</u>. By submitting a proposal, TICD certifies to the Authority that it has not paid nor agreed to pay and will not pay or agree to pay any fee, or any other thing of value contingent on the award of a contract for the project to any City or Authority employee or official, or to any contracting consultant hired by the City or the Authority for purposes of this project.
- G. Proposal as a Public Record. Generally, all documentation including financial information submitted by TICD to the City or the Authority are public records under State and local law, including the City's Sunshine Ordinance. TICD will clearly designate those financial records that it in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the Authority will attempt to reasonably maintain the confidentiality of such financial information, consistent with the Authority's general practices for maintaining the confidentiality of such information. However, the Authority will not under any circumstances be responsible for any damages or losses incurred by TICD or any other person or entity because of the release of such financial information.

THEREFORE, IT IS IMPORTANT FOR TICD TO CLEARLY IDENTIFY IN ITS PROPOSAL THOSE FINANCIAL RECORDS OR OTHER INFORMATION THAT TICD IN GOOD FAITH DETERMINES TO BE A TRADE SECRET OR CONFIDENTIAL PROPRIETY INFORMATION PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. TO THE EXTENT PERMITTED BY LAW, THE AUTHORITY WILL ATTEMPT TO REASONABLY MAINTAIN THE CONFIDENTIALITY OF SUCH FINANCIAL INFORMATION, CONSISTENT WITH THE AUTHORITY'S GENERAL PRACTICES FOR MAINTAINING THE

CONFIDENTIALITY OF SUCH INFORMATION, AND INFORMATION SO MARKED WILL BE REDACTED FROM THE COPIES PRESENTED TO THE PUBLIC. HOWEVER, GENERALLY, ALL DOCUMENTATION INCLUDING FINANCIAL INFORMATION SUBMITTED BY TICD TO THE CITY OR THE AUTHORITY ARE PUBLIC RECORDS UNDER STATE AND LOCAL LAW, INCLUDING THE CITY'S SUNSHINE ORDINANCE AND NEITHER THE CITY NOR THE AUTHORITY WILL BE RESPONSIBLE FOR ANY DAMAGES OR LOSSES INCURRED BY TICD OR ANY OTHER PERSON OR ENTITY BECAUSE OF THE RELEASE OF SUCH FINANCIAL INFORMATION.

- H. Return of Materials. The Authority will not return TICD's proposal or any information submitted in connection with it unless TICD has properly designated financial portions of the proposal as confidential at the time of proposal in accordance with the terms above and has then clearly requested that such information be returned, and provided that the Authority is legally permitted to return such documents.
- L. <u>Right to Disqualify</u>. The Authority reserves the right to disqualify TICD on the basis of any real or apparent conflict of interest that is disclosed by the responses submitted or other data available to the Authority. This disqualification is at the sole discretion of the Authority.
- M. Waiver of Claims Against the City and the Authority. TICD shall not obtain by its response to this RFP any claim against the City or the Authority by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities of defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into any such lease, any statement, representations, acts or omissions of the Authority or the City or its agents, the exercise of any discretion set forth in or concerning any of the foregoing, and any other matters arising out of all or any of the foregoing.

Without limiting the generality of the foregoing, the information presented in or in connection with the RFQ and this RFP, including the EDC Application and the information in the Developer's Packet is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that any information contained in or related to the RFQ or this RFP is accurate and complete. No representations, assurances, or warranties pertaining to the accuracy of such information are or will be provided by the Authority or the City or its consultants and no claim may be brought against the City or the Authority, or any of their respective consultants as a result of the presentation of such information, irrespective of its accuracy.

EXHIBIT A - SUMMARY OF GOALS AND OBJECTIVES

The Draft Reuse Plan for former Naval Station Treasure Island ("Treasure Island"), endorsed by the City's Planning Commission and Board of Supervisors in July of 1996, sets forth broad land use planning objectives and polices for the redevelopment of Treasure Island, which are summarized below.

I. Land Uses

- Provide a broad mix of mutually supportive, publicly oriented attractions at Treasure Island, emphasizing marine-related, recreational, entertainment, and hospitality uses.
- Emphasize uses that take advantage of Treasure Island's unique position in the center
 of the San Francisco Bay and its outstanding views. Heighten the visibility and sense
 of immediacy between Treasure Island and the rest of the City.
- Pursue uses that will enliven the water's edge and improve public access to the Bay.
 Ensure continuos public access to the shoreline edge.
- Create areas for active and passive recreational uses such as ball fields and other recreational activities, open space, trails, and other park-like amenities, as well as water-oriented recreational activities.
- Preserve public open spaces that focuses on Treasure Island's natural features and island setting and which provide a sense of nature and visual contrast to developed portions of Treasure Island
- Maintain and improve the quality of Treasure Island's natural environment, including, to the extent feasible, the development of wet lands.
- Encourage the preservation of buildings with historic and/or architectural significance.
- Permit institutional uses that are compatible with the Redevelopment Plan and which serve a broad range of public purposes. Focus institutional uses on the reuse of existing specialized facilities.

II. Economic Development

- Promote activities that will create new jobs and contribute to the economic vitality of the City and the region.
- Purse development that will generate sufficient revenues to pay for necessary improvements to Treasure Island.
- Allow for flexibility in acceptable land uses to adapt to changing market conditions and changes in technology.

- Ensure the broad participation of minority, women-owned, local and disadvantaged businesses in all facets of the implementation of the Redevelopment Plan.
- Foster economic development opportunities for homeless service providers that will
 give them a stake in the successful redevelopment of Treasure Island.
- Encourage interaction among economic activities to promote economic selfsufficiency.

III. Transportation.

- Attempt to minimize increases in automobile traffic on the San Francisco-Oakland Bay Bridge, particularly during peak weekday and weekend periods.
- Encourage uses that can be supported by mass and/or public transit, particularly water-borne transportation.
- Establish coordinated local and regional transit plans for providing access to Treasure Island, and coordinate new development with existing, new and anticipated transportation systems.
- Establish water transportation connections to the rest of the region. Promote a
 regional system of ferry landings that are accessible by diverse travel modes.
- Encourage the use of water taxis to support regularly scheduled ferries.
- Develop safe, attractive, pedestrian friendly multi-modal system of streets, walk ways
 and bike paths that can accommodate bicycle and pedestrian traffic along with
 shuttles, transit buses and automobiles. Consider innovative, non-traditional, means
 of circulating people throughout Treasure Island.

IV. Interim Uses

- Permit interim uses that maintain flexibility, and facilitate and are compatible with long-term reuse.
- Focus interim reuse on existing structures that can feasibly be operated in compliance with applicable laws and in a manner and for a term consistent with the long-term redevelopment of Treasure Island.
- Minimize life-safety hazards from existing buildings by requiring structures to meet the FEMA-178 life-safety standard whenever feasible.

1. Infrastructure and other Base-Wide Improvements.

Cause new development to address seismic hazards.

- Phase-in seismic reinforcements to the perimeter of Base and the causeway and longterm utility and other infrastructure improvements in conjunction with long-term development.
- Utilize existing infrastructure to the extent feasible to foster economic development.
- Ensure that hazardous substances are adequately characterized and remediated.
- Maximize utilization of federal funds to complete remediation consistent with the Redevelopment Plan.
- Coordinate the phasing of clean-up with areas of anticipated interim reuse and longterm redevelopment.
- Cause new development to comply with applicable laws, including disability access laws.
- Develop Base-wide accessibility programs and improvements.
- Promote innovations in sustainable development and resource management.
- Incorporate environmentally sensitive building and street designs and undertake improvements that will promote energy conservation and efficiency.
- Pursue using wet lands to treat storm-water run-off.
- Minimize noise and adverse visual impacts from the Bay Bridge, institutional users and other uses on Treasure Island.

IV. Community and Social Services; Public Safety.

- To the extent consistent with long-term redevelopment and permitted by applicable laws, support the use of existing housing by a broad range of persons, reflecting the socioeconomic and cultural diversity of the San Francisco Bay Area.
- Provide community facilities and essential public services for Treasure Island's residents, visitors and businesses.
- Address homeless needs identified in San Francisco's Continuum of Care as part of a balanced overall plan in accord with federal base closure regulations.
- Include services for the homeless through a combination of programs, including transitional housing, job training and economic development opportunities.
- Grant job-ready homeless and economically disadvantaged persons access to
 employment opportunities. Individualize job-training programs to the specific needs
 of employers.

- Ensure the provisions of adequate public safety services such as police, fire, and emergency medical services for Treasure Island.
- Prepare and refine emergency response plans for Treasure Island.
- Encourage collaborations between institutional users and service providers to reduce costs for facilities and services.

EXHIBIT B – LISTING OF HISTORIC RESOURCES







